



EX PARTE OR LATE FILED James C. Smith
Senior Vice President

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APR 16 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
April 16, 2003

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Ex Parte Presentation

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region,
InterLATA Services in Michigan*, WC Docket No. 03-16

Dear Ms. Dortch:

SBC filed its application for section 271 relief in Michigan on January 16, 2003. On that date, we believed that we had fully satisfied the statutory requirements for this Commission to grant the application. We continue to believe so today. During the course of this 90-day proceeding, however, the Commission Staff has raised a few questions that SBC simply needs more time to answer. For this reason, SBC hereby withdraws its application so that we might have sufficient time to respond. When it re-files its application for Michigan, SBC will provide this additional information, as well as updated information necessary to demonstrate SBC's continued compliance with the requirements of section 271.

In accordance with this Commission's rules governing ex parte communications, I am filing an original and two copies of this letter. Thank you for your kind assistance in this matter.

Sincerely,

James C. Smith

cc: Jeffrey Carlisle
John P. Stanley
Gina Spade
Susan Pie

Layla Seirafi-Najar
Dorothy Wideman
Ann R. Schneidewind
Qualex International

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Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE
April 16, 2003

Contact: David Fiske, 202/418-0513
Mike Balmoris, 202/418-0253

STATEMENT OF FCC CHAIRMAN MICHAEL POWELL ON WITHDRAWAL OF SBC's 271 APPLICATION FOR MICHIGAN

Washington, DC – SBC has withdrawn its application to provide long distance service in Michigan. The FCC cannot approve such applications by the Bell Companies unless they satisfy the requirements of section 271.

In my view, SBC's application generally met the requirements of section 271. Ultimately, the outstanding issues that prevented approval were very narrow, but nonetheless important. Perhaps the most troubling of these issues relates to billing. Despite extensive examination of the record supporting these applications, questions remain regarding whether SBC is currently providing wholesale billing functions for competitive LECs in a manner that meets the requirements of our existing precedent. Indeed much of the information related to this issue, including the results of a data reconciliation, was introduced very late in our 90 day process. If the Commission were to take this evidence into account, it would have required an unusually broad waiver of our 'freeze frame' rule.

I would like to thank all of the Commissioners of the Michigan Public Service Commission and its Chair, Laura Chappelle for their outstanding work and enormous contribution to this proceeding. Indeed, few states have achieved the levels of market penetration seen by Michigan. I am confident that SBC, in consultation with the Michigan Commission, Department of Justice, and this Commission, will expeditiously resolve the outstanding issues that prevented approval.

-FCC-

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Michigan Bell Telephone Company, and)	WC Docket No. 03-16
Southwestern Bell Communications Services,)	
Inc. for Authorization To Provide In-Region,)	
InterLATA Services in Michigan)	

MEMORANDUM OPINION AND ORDER

Adopted: April 16, 2003

Released: April 16, 2003

By the Wireline Competition Bureau:

1. On January 16, 2003, SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. (collectively, Michigan Bell) filed an application for authorization to provide in-region, interLATA service in the State of Michigan, pursuant to section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. On April 16, 2003, Michigan Bell filed an *ex parte* letter in this docket withdrawing its application.¹ As such, we hereby terminate this docket. Michigan Bell further stated that, when it re-files its application for Michigan, it will provide “additional information, as well as updated information necessary to demonstrate [Michigan Bell’s] continued compliance with the requirements of section 271.”

2. Accordingly, **IT IS ORDERED**, pursuant to authority delegated under sections 0.91 and 0.291 of Commission’s rules, 47 C.F.R. §§ 0.91 and 0.291, that the proceeding in WC Docket No. 03-16 **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Senior Deputy Chief, Wireline Competition Bureau

¹ Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-16 (filed Apr. 16, 2003).



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VIA E-DOCKET

April 16, 2003

Ms. Elizabeth A. Rolando
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701

Re: ICC Docket No. 01-0662

Dear Ms. Caton:

I am electronically filing the Joint CLECs' Emergency Motion for Suspension of the Schedule or, in the Alternative, for Additional Time for Filing Exceptions with the Commission via E-Docket in the above-referenced docket.

Very truly yours,

A handwritten signature in cursive script that reads "Cheryl Urbanski Hamill".

Cheryl Urbanski Hamill

CUH/mp
Enclosures

cc: Administrative Law Judge Eve Moran (Via E-Mail)
Service List (Via E-Mail)

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	
)	Docket No. 01-0662
Investigation concerning Illinois Bell)	Phase II
Telephone Company's compliance)	
With Section 271 of the)	
Telecommunications Act of 1996)	

**JOINT CLECS' EMERGENCY MOTION FOR SUSPENSION OF THE
SCHEDULE OR, IN THE ALTERNATIVE, FOR ADDITIONAL TIME FOR
FILING EXCEPTIONS**

AT&T Communications, Inc. ("AT&T"), CIMCO Communications, Inc., Forte Communications, Inc., McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), TDS Metrocom, LLC ("TDS Metrocom"), WorldCom, Inc. and XO Illinois, Inc. (collectively, "Joint CLECs") hereby respectfully request that the Administrative Law Judge ("ALJ") immediately suspend the schedule for filing briefs on exception to the ALJ's Proposed Final Order on Investigation ("Proposed Final Order") circulated to the parties on April 8, 2003 and set a status hearing to establish a new schedule for the remainder of this proceeding. As a less-preferred alternative, Joint CLECs respectfully request that the parties be granted an additional ten days – or until May 1 – in which to file exceptions to the Proposed Final Order.

In support of their Motion, Joint CLECs state as follows:

1. An extremely expedited schedule was established in this proceeding in an effort to accommodate SBC Illinois's desire to be in a position to file its Section 271 application with the FCC shortly after April 16, 2003, the date SBC Michigan had anticipated receiving authority to offer in-region interLATA services from the FCC.

Because SBC Illinois had indicated its desire to file its 271 application shortly after the SBC Michigan application was granted, it wanted a final recommendation from the Illinois Commerce Commission (“Commission”) no later than the first week in May.

2. Accordingly, a schedule was established that called for a Proposed Final Order on April 8 and Exceptions on April 18 – this Friday. The Proposed Final Order issued on April 8 is 870 single-spaced pages in length, half of which is new since the conclusion of Phase I.¹

3. The sole premise advanced by SBC for the extremely expedited schedule in this matter no longer exists. Specifically, SBC Michigan voluntarily withdrew its Section 271 application at the FCC this morning in WC Docket No. 03-16. While there is no additional detail to share at this point, the press releases indicate that SBC Michigan will refile an application in 30 days.² An FCC decision on the refiled application would be due no later than 90 days after the refiling of the application.

4. Therefore, there is no longer any legitimate reason to operate under the extremely compressed time frames imposed in Phase II of this proceeding. In particular, the parties intending to file exceptions to the four hundred or so pages of new material in

¹ Although the ALJ obviously labored mightily to meet the April 8 scheduled issuance date for the proposed order, the proposed order issued on April 8 was by no means a finished product consistent with what is usually anticipated for a proposed order. It was issued without a table of contents (a final table of contents was not issued until two days later), making the 870-page proposed order extremely difficult to navigate. The proposed order contains numerous errors that, although perhaps individually minor in nature, in the aggregate impair the parties’ ability to produce exceptions in the short time frame imposed by the schedule. Further, subsequent to issuing the proposed order, the ALJ has issued various revised sections and other directives to the parties all emanating from the fact that the proposed order was an incomplete product when issued on April 8.

² A copy of SBC Michigan’s letter to the FCC voluntarily withdrawing its Section 271 application is attached as Attachment A.

the Proposed Final Order certainly need additional time in which to prepare their exceptions and formulate replacement language.³

5. Because the pivotal event upon which the existing schedule was premised has not occurred, SBC Illinois will not be prejudiced by an extension of the schedule.

WHEREFORE, Joint CLECs respectfully request that the Administrative Law Judge immediately suspend the schedule for filing briefs on exception to the Proposed Final Order circulated to the parties on April 8, 2003 and set a status hearing to adjust the schedule for the remainder of this proceeding. In the alternative, Joint CLECs respectfully request that they be immediately granted an additional ten days – or until May 1 – in which to file exceptions to the Proposed Final Order.

Respectfully submitted,

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³ We note as well that the due date for filing exceptions is Good Friday and falls at Passover as well.

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

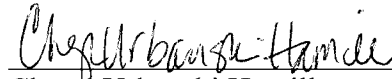
Illinois Commerce Commission)	
On its Own Motion)	
)	ICC Docket No. 01-0662
Investigation concerning Illinois Bell)	
Telephone Company's compliance)	
with Section 271 of the)	
Telecommunications Act of 1996)	

NOTICE OF FILING

PLEASE TAKE NOTICE that we have this 16th day of April, 2002, filed with the Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, via e-Docket Joint CLECs' Emergency Motion for Suspension of the Schedule or, in the Alternative, for Additional Time for Filing Exceptions.

PROOF OF SERVICE

Cheryl Urbanski Hamill, being first duly sworn, deposes and says that she is an Attorney at AT&T Communications of Illinois, Inc. and that on April 16, 2003, copies of the Joint CLECs' Emergency Motion for Suspension of the Schedule or, in the Alternative, for Additional Time for Filing Exceptions were served on all parties on the service list via E-Mail.



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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission On Its Own Motion)	
)	
Investigation Concerning Illinois Bell Telephone)	Docket No. 01-0662
Company's compliance with Section 271 of the)	
Telecommunications Act of 1996)	

SBC ILLINOIS' OPPOSITION TO JOINT CLECS' EMERGENCY MOTION

Illinois Bell Telephone Company ("SBC Illinois" or the "Company"), by its attorneys, hereby submits its Opposition to the Joint CLECs' Emergency Motion for Suspension of the Schedule, or, in the Alternative, For Additional Time For Filing Exceptions ("Joint Motion").

1. The CLECs have requested that the April 18, 2003, due date for Exceptions to the Administrative Law Judge's Proposed Final Order on Investigation be suspended or, in the alternative, that the parties be granted an additional ten days (until May 1) to file Exceptions. In support of the Joint Motion, the CLECs point out that SBC Michigan has voluntarily withdrawn its section 271 application at the FCC (WC Docket No. 03-16). The CLECs acknowledge that SBC's press releases have stated that SBC Michigan intends to refile within 30 days. Based on these facts, the Joint Motion simply asserts that "there is no longer any legitimate reason to operate under the extremely compressed timeframes imposed in Phase II of this proceeding." (Joint Motion at 2).

2. The CLECs are incorrect and the schedule in this proceeding should not be changed. SBC Illinois does not expect that the withdrawal of SBC Michigan's Section 271 application will impact timetables in Illinois. The Michigan application was withdrawn on limited procedural grounds. FCC Chairman Powell has issued a statement, in which he states that SBC Michigan's application "generally met" the requirements of Section 271, that the

outstanding issues were “very narrow,” and that they principally related to billing. This billing issue relates to a one-time UNE-P CABS reconciliation project that took place in January 2003. This reconciliation took place shortly after the Michigan application was filed; the information subsequently supplied by SBC Michigan in ex partes, including the results of this reconciliation, raised concerns with respect to the FCC’s “complete as filed” procedural rule. However, as Chairman Powell recognized in his statement, SBC Michigan should be able to resolve any outstanding issues “expeditiously.” A copy of Chairman Powell’s statement is attached, as well as a press release from the Michigan Public Service Commission (“MPSC”).

3. The UNE-P CABS reconciliation issue should not impact the schedule in this proceeding. This reconciliation was a one-time event, it is now complete, and it has nothing to do with the ability of the CABS billing system to accurately and timely bill CLECs for the UNE-P. Rather, the reconciliation was undertaken to ensure that UNE-P billing records in CABS matched the UNE-P provisioning records in ACIS for certain circuits that had been delayed or failed to post in CABS as a result of the conversion. In contrast, CABS UNE-P billing was tested by BearingPoint in Illinois after the October 2001 conversion from RBS to CABS, and SBC Illinois passed. BearingPoint filed its report with the Illinois Commission on December 20, 2002. The billing test included both a Bill Production and Distribution Process Evaluation (PPR13) conducted from April 2001 – November 22, 2002, and a Functional Carrier Bill Evaluation (TVV9) conducted from September 2001 – November 22, 2002. Significantly, BearingPoint concluded that UNE-P service orders are posted to the CABS billing system in a timely manner, and that CABS produces accurate and timely UNE-P bills. In its process and procedures review, BearingPoint concluded in PPR 13-6 that “the bill production process includes procedures to capture and apply service order activity properly.” Specifically, “UNE-P

service orders are updated to the CABS Master File in the CABS billing system from the Customer Records Database in ACIS.” In its transaction verification and validation test, Bearing Point concluded in TVV 9-32 that “UNE-P bills reflected timely service order activity.” (BearingPoint Illinois OSS Evaluation Project Report, December 20, 2002, at 477, 787).

4. The details and need for this reconciliation were fully disclosed to the CLECs (and Staff) through calls, business-to-business discussions, and accessible letters. Notably, the CLECs did not raise the CABS reconciliation billing issues in their Phase II affidavits in this proceeding, notwithstanding the fact that they were fully aware of them.¹ Therefore, the FCC’s CABS billing concerns do not impact any issues pending in this proceeding. There are no new facts or issues that need to be addressed here.

5. Contrary to the CLECs’ apparent assumptions, the withdrawal and refiling of the SBC Michigan Section 271 application is not expected to impact the FCC filing schedule for SBC Illinois’ Section 271 application. Because the FCC’s concerns are narrow, it is currently SBC Illinois’ intention to proceed with a mid-May filing of its application with the FCC. Any additional information on the CABS reconciliation process submitted with the refiled SBC Michigan section 271 application will be performed on a five-state basis and will resolve the FCC’s concerns once and for all for the entire region.

6. In short, there is no basis for suspending the schedule in this proceeding or extending it in any way.² The time has come to bring full telecommunications competition and its undisputed benefits to Illinois businesses and consumers. CLECs are offering and actively

¹ For example, AT&T’s and WorldCom’s Illinois affidavits regarding billing largely tracked affidavits they filed virtually contemporaneously with the FCC, and in many instances were a “cut and paste” effort. However, they did not include the CABS reconciliation project – an issue which they raised only at the FCC.

² The Joint CLECs note that the due date for filing exceptions is Good Friday and fall at Passover as well. (Joint Motion at 3, fn. 3). This schedule was established by the Commission after extended debates between the parties. No party objected to the April 18 due date at that time. The dates for Good Friday and Passover have not changed in the interim.

promoting “one stop” calling plans that bundle local, toll, and long-distance service. SBC Illinois seeks the opportunity to do the same. SBC Illinois is confident that, in the very near term, Illinois consumers will see the benefits of even more robust competition for both local and long distance services. Every day of delay is another day Illinois businesses and consumers pay more for long distance service than they should, and another day that they are deprived of competitive choices they should otherwise enjoy.

WHEREFORE, in view of the foregoing, the Joint CLECs’ Emergency Motion for Suspension of the Schedule, or, in the Alternative, For Additional Time For Filing Exceptions should be denied.

Respectfully submitted,

ILLINOIS BELL TELEPHONE COMPANY

One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Louise A. Sunderland, an attorney, certify that a copy of the foregoing **MOTION** was served on the following parties by regular U.S. Mail and electronic transmission on April 17, 2003.

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**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On its Own Motion)	
)	ICC Docket No. 01-0662
Investigation Concerning Illinois Bell)	
Telephone Company's Compliance)	
with Section 271 of the)	
Telecommunications Act of 1996)	

REBUTTAL

AFFIDAVIT OF

SHANNIE MARIN

ON BEHALF OF

**AT&T COMMUNICATION OF ILLINOIS, INC., TCG
CHICAGO, TCG
ILLINOIS AND TCG ST. LOUIS**

AT&T EX. 5.0

March 12, 2003

1. My name is Shannie Marin. I am a Manager with AT&T. In that capacity, I am responsible for functioning as a liaison between the 13-state SBC companies and various AT&T organizations, including Access and Carrier Billing, Product Delivery and Product Marketing, to ensure that AT&T's business requirements are met. I am a graduate of the University of San Francisco, California. I have over 28 years of experience with AT&T, and have been involved in local market negotiations for the past seven years. My primary areas of negotiations have included facility-based and Unbundled Network Elements ("UNEs") billing and recording requirements, E-911, Interconnection contract compliance, Operator Services, Subscriber listings and Voice Mail.
2. In this Affidavit I will respond to the Phase 2 Rebuttal Affidavit of Mark J. Cottrell and Denise Kagan Regarding Billing on Behalf of SBC Illinois. SBC witnesses Mr. Cottrell and Ms. Kagan contend that SBC Illinois provides CLECs with "accurate, timely and auditable billing and usage information in compliance with the requirements of the Act." To the contrary, AT&T has experienced -- and continues to experience -- ongoing problems with the accuracy of SBC's wholesale billing, usage data and rate application.
3. For example, SBC's ongoing inability to provide timely and accurate line loss notifications ("LLN") has caused AT&T and other CLECs to continue billing former customers, leading to double billing. SBC told AT&T that a January 2003 "data bash" would determine the extent to which the LLN problems have caused errors in the wholesale bill but now claims that the "data bash" did not address the

LLN problems, which persist. SBC stated that it was comparing its CABS UNE-P records to its ACIS records used for provisioning to determine if its CABS UNE-P records were accurate and conformed to the information in the ACIS system. The “data bash” demonstrated pervasive problems with SBC’s wholesale billing, however. I have raised these same billing problems at the FCC in conjunction with SBC Michigan’s pending 271 proceeding. Rather than reiterate these wholesale billing problems, I attach as Exhibit 1 hereto the Joint Reply Declaration I co-sponsored with Ms. Sarah DeYoung in that proceeding, WC Docket 03-16, on March 4, 2003.

4. SBC has also been providing AT&T with inaccurate bills in Illinois for various UNEs, products and services AT&T purchases from SBC. AT&T opened a billing issue with SBC on December 12, 2002 advising SBC that it was sending AT&T usage records for repeat dial calls when, in fact, AT&T’s customers were not using that feature but were instead using the call return feature. AT&T advised SBC that its EMI (Exchange Message Interface) coding for these two features was transposed – that is, that it had transposed the OBF coding for repeat dial calls and the OBF coding for the call return feature and the one was being depicted as the other. As a result, the Daily Usage File (DUF) records SBC had been sending to AT&T and which AT&T uses to bill its end user customers were incorrect, thereby causing billing errors and AT&T customer dissatisfaction.
5. On January 10, 2003, SBC admitted it had been using the wrong codes for quite some time and that its billing codes did not comply with industry standards and

guidelines, and agreed to investigate a fix. On March 4, 2003, however, SBC advised AT&T that while it realized that its feature codes were inconsistent with industry guidelines, it has been using these incorrect codes in the 5 state Ameritech region since it first implemented the coding and it has no plans to change it. SBC further indicated that its incorrect coding is documented on the CLEC website under the DUF guide, and that it was not going to correct the problem. SBC suggested instead that AT&T open an issue in the CLEC forum. As SBC is well aware, these are the usage records that AT&T uses to bill its end user customers. AT&T's reputation as a reliable local service provider is damaged when SBC refuses to follow industry guidelines and knowingly continues to deliver incorrect usage records to AT&T.

6. SBC has also overbilled AT&T for nonrecurring charges, monthly recurring charges and per message Daily Usage Feed charges. AT&T opened a billing issue with SBC in October 2002 for the overbilling of nonrecurring charges applicable to AT&T's purchase of new UNE-Platform combinations. Specifically, only two nonrecurring charges are applicable to new UNE-Platform combinations: a \$1.02 Record Work Only charge, and a \$20.21 loop line connection charge; SBC's billed rates have exceeded the allowed rates for both of those NRCs. In addition, SBC has been billing AT&T a basic port installation charge of \$53.01 for new UNE-P combinations – a charge that is inapplicable to new UNE-P combinations. Moreover, SBC has also been billing other port service order charges for new UNE-Platform combinations, which is inconsistent

- with the Commission's Orders in ICC Docket No. 98-0396. After investigating, SBC has agreed to credit AT&T for some of the overages it billed AT&T for the nonrecurring charges applicable to new UNE-Platform combinations. SBC has indicated to AT&T that it intends to credit AT&T for some of the overbilled amounts, but the billing inaccuracies have yet to be finally resolved.
7. SBC has also been overbilling AT&T for the monthly port rate, also known as the Unbundled Local Switching (ULS) element. My understanding is that SBC was required to reduce its monthly recurring port rate in Illinois from \$5.01 to \$2.18 as a result of an Illinois Commerce Commission Order dated July 10, 2002 in ICC Docket No. 00-0700. SBC's tariff implementing this July change ordered by the Commission became effective September 21, 2002. AT&T continued to see the \$5.01 port rate on its bills for the ports it purchased after the \$2.18 rate became effective. When AT&T raised this issue with SBC in the December 2002 time frame, SBC initially contended that AT&T was not entitled to the lower port rate without amending its interconnection agreement.
8. Then another stumbling block arose. SBC uses two USOCs in Illinois for billing AT&T for ULS charges: UJR (for residential ports) and UPC (for business ports). Originally, SBC contended that the UJR was not a valid USOC for Illinois and that it would only reduce business ports to \$2.18 per month; according to SBC, the residential ports would continue to be billed at the monthly rate of \$5.01 despite the ICC's July 10, 2002 Order in ICC Docket No. 00-0700. SBC agreed

to reduce the business port rate to \$2.18 and to credit AT&T for the overbilled amounts. To date, SBC has only agreed to provide credit for the UPC USOC even though it has finally acknowledged that the UJR USOC is a valid Illinois USOC. As a practical matter, it is absurd that SBC has two USOCs for the same UNE and that it has agreed to correct and give credit for the overbilling on one USOC but not the other.

9. As of the date of filing this affidavit, this issue has not been resolved because SBC has indicated that it is not yet ready to finalize and disclose its decision. This is yet another classic example of the incorrect rates AT&T is being billed by SBC and the delay AT&T experiences when working with SBC, even at an escalated level, to obtain credit for overbilling.
10. SBC Illinois has also been overbilling AT&T for Daily Usage Feeds. The Commission-approved DUF rate in Illinois is \$.000459 (as of July 10, 2002), yet SBC is charging the old rate of \$.000918 per message. This overbilling has been occurring since at least September 2002. As recently as March 7, 2003, the only response SBC has given AT&T was that the case was being reviewed by product management and SBC hoped to be able to update AT&T by March 12.
11. This concludes my rebuttal affidavit.

AT&T Reply Comments --DeYoung/Marin Reply Dec.
 Michigan 271 Application
 WC Docket No. 03-16

**Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554**

 In the Matter of)
)
)

Application by SBC Communications)
 Inc., Michigan Bell Telephone Company,)
 and Southwestern Bell Communications)
 Services, Inc. for Provision of In-Region,)
 InterLATA Services in Michigan)

WC Docket No. 03-16

JOINT REPLY DECLARATION OF SARAH DEYOUNG AND SHANNIE MARIN

1. My name is Sarah DeYoung. I previously submitted declarations in this proceeding with Walter Willard on OSS issues and with Timothy Connolly on line sharing issues. My background and credentials are set forth in the joint declaration I filed on February 6, 2003 with Walter Willard on OSS issues in this proceeding.

2. My name is Shannie Marin. I am a Manager with AT&T. In that capacity, I am responsible for functioning as a liaison between the 13-state SBC companies and various AT&T organizations, including Access and Carrier Billing, Product Delivery and Product Marketing, to ensure that AT&T's business requirements are met. I am a graduate of the University of San Francisco, California. I have over 28 years of experience with AT&T, and have been involved in local market negotiations for the past seven years. My primary areas of negotiations include negotiating AT&T's facility-based and Unbundled Network Elements ("UNEs") billing and recording requirements, E-911, Interconnection contract compliance, Operator Services, Subscriber listings, and VoiceMail.

I. PURPOSE AND SUMMARY OF DECLARATION

3. This reply declaration supports the comments submitted by other CLECs in this proceeding regarding ongoing problems with SBC's wholesale billing.¹ When Ameritech Michigan first sought Section 271 approval more than five years ago, this Commission rejected that application in part because Ameritech Michigan could not provide accurate and timely bills. *Michigan 271 Order ¶¶ 200-03*. Notwithstanding the passage of time, SBC still cannot provide accurate and timely bills as required by Section 271. First, SBC's ongoing inability to provide timely and accurate line loss notifications ("LLN") has caused AT&T and other CLECs to continue billing former customers, leading to double billing. Second, the late line loss notices have caused AT&T to question whether SBC is providing AT&T with accurate wholesale bills. SBC told AT&T that a January 2003 "data bash" would determine the extent to which the LLN problems have caused errors in the wholesale bill but now claims that the "data bash" did not address the LLN problems, which still continue. The "data bash" did, however, demonstrate pervasive problems with SBC's wholesale billing. SBC has been charging over 138,000 UNE-P circuits (out of fewer than one million UNE-P customers) incorrectly on CLEC wholesale bills, a staggering number of errors that makes a mockery of SBC's claims about the efficiency of its billing operations.

¹ See WorldCom 12 (major discrepancies in number of transactions submitted to SBC and number billed by SBC); Z-Tel 3-6 (problems with line loss notifications have led to over 7000 double billing situations in past two years); Mich. CLEC Assoc. 11-12 (58% of billing entries were inaccurate); TDS Metrcorn 25-26 (ongoing problems with SBC bills).

II. SBC DOES NOT PROVIDE ACCURATE AND TIMELY BILLING INFORMATION TO CLECS.

4. To comply with its obligations under checklist item 2 of Section 271, SBC must demonstrate that it provides CLECs with complete, accurate, and timely reports on service usage of CLEC customers and complete, accurate, and timely wholesale bills.

Pennsylvania 271 Order ¶ 13; *Qwest 9-State 271 Order* ¶ 115. In SBC/Ameritech Michigan’s prior Section 271 application to this Commission over five years ago, this Commission found that SBC/Ameritech’s billing systems were inadequate due to SBC/Ameritech’s failure to issue prompt order completion notices, which led to double-billing of customers by Ameritech and CLECs. *Michigan 271 Order* ¶ 200. The Commission rejected Ameritech’s explanations and ruled that “the double-billing problem is compelling evidence that Ameritech’s OSS for ordering and provisioning for resale services is not operationally ready” and that Ameritech was therefore “not providing nondiscriminatory access to OSS functions.” *Id.* ¶ 203.² The Commission determined that “double-billing, as well as the problems associated with manual processing . . . constitute problems fundamental to Ameritech’s ability to provide nondiscriminatory access to OSS functions. . . . [W]e do find that, in and of itself, double-billing is a serious problem that has a direct impact on customers and, therefore, must be eliminated.” *Id.*

5. The double billing problems described in the *Michigan 271 Order* continue today for AT&T and its UNE-P customers. Over the past year, SBC’s ongoing inability to provide accurate and timely LLNs has caused significant billing problems for AT&T and

² The Commission’s order noted that Ameritech had identified 435 customers who were double

other CLECs, including double billing of customers that have migrated to other carriers.

The LLN is a critical component of the billing system because it alerts the CLEC that a customer has migrated to another carrier or otherwise left the carrier's service. Upon receipt of this notification, the CLEC issues a final bill to the customer and closes out the customer's service. With SBC's unstable LLNs, however, AT&T has not received timely notice of customer migrations and has continued billing departed customers, resulting in double billing by AT&T and by the customer's new service provider.

6. Other CLECs have encountered the same problem. For example, Z-Tel, with a Michigan customer base of 22,000, has received over 7500 double billing complaints, largely associated with SBC's inability to provide timely and accurate LLNs. Z-Tel 5 & Walters Dec. ¶¶ 7-9. Some of these complaints were filed with state regulatory commissions, state consumer agencies, and this Commission. Resolving these complaints before these agencies is a costly and time consuming process, and the filed complaints symbolize the damage to a CLEC's reputation caused by double billing. The appearance that the CLEC is seeking to continue to collect for ongoing service from a former customer is nothing less than crippling to a CLEC's reputation as a reliable service provider.

7. The basic problem is that SBC has *never* been able to provide accurate and timely LLNs to AT&T and other CLECs. In December 2001, the Michigan Public Service Commission declared that SBC's inability to provide accurate line loss notification "has a great potential effect on competition for local exchange service and is one of the most

billed in error. *Michigan 271 Order* ¶ 200 n. 509.

serious of the problems raised in this case. . . . Failure to provide timely notice of migrations is an egregious and anticompetitive neglect of [SBC]'s duty. This problem, including both CLEC-to-CLEC migrations and Winback changes, must be resolved promptly.”³ The Michigan PSC directed SBC to report in 20 days on the steps it was taking to resolve the problem, to provide timeframes for notifications, and confirmation that SBC had provided notice to the affected customers that the continued billing after the switch in service was SBC's fault and not the fault of the CLECs.⁴

8. Notwithstanding the Michigan PSC's directive, SBC has been unable to resolve the problems with its LLN and provide timely and accurate LLN during the past 14 months. The Initial DeYoung/Willard Declaration (at ¶¶ 109-32) and Reply DeYoung/Willard Declaration catalog the ongoing LLN problems that AT&T has experienced, and the comments of other CLECs confirm the continuing nature of this problem.⁵ Indeed, in late January 2003, after the filing of SBC's application in this case, SBC changed the format of LLN information it provides to CLECs without prior notice and sent WorldCom approximately 3000 LLNs that could not be read by WorldCom's systems.⁶ SBC has also announced that it is disbanding the group established to address and resolve LLN problems, even though the group has clearly not completed its task.⁷

³ Opinion and Order, *In the Matter, on the Commission's Motion to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320 (12/20/01), at 6.

⁴ *Id.* at 6-7.

⁵ See, e.g., WorldCom 10-11; Z-Tel 3-5.

⁶ WorldCom 11.

⁷ WorldCom 4-5. SBC's most recent effort to address the LLN issue, its compliance plan filing on LLN, is merely a band aid, as it addresses only notification in the case of LLN problems, without addressing the root cause of the problems in the first place.

9. This inability to provide accurate and timely LLNs has undercut the integrity of SBC's billing process. The LLN is key to a CLEC's termination of its customers' service, and as noted above, without a timely and accurate LLN for customers migrating to another service provider, AT&T continues to bill those customers, resulting in billing both by the customers' new service provider and AT&T. Such double billing causes higher costs for AT&T in terms of time and effort to resolve the double billing problem and to issue the credits to customers. As noted above, equally significant is the harm to AT&T's reputation. AT&T as a new service provider in the local exchange market must seek to win new customers based on its reputation for reliability, and that reputation suffers if it becomes known that AT&T issues erroneous bills to customers that have left its service.

10. This is also an area in which SBC's performance measure data do not capture the extent of the problem. As the Department of Justice found in its Evaluation, "[t]he most relevant metric, MI4, is designed to determine whether bills are correctly being calculated according to SBC's billing tables. . . . Such a metric cannot, of course, show whether the underlying information about the lines themselves, for which the rates are then calculated, is accurate." DOJ Eval. 11 n.48. Moreover, SBC has only recently agreed, but has not yet implemented, a performance metric addressing LLN accuracy.

11. In addition to causing double billing, late line loss notices have the potential to affect the accuracy of the wholesale bill. SBC told AT&T that it would address the ongoing LLN issues as part of a special "data bash" of UNE-P billing records in January 2003. An issues list maintained by AT&T and provided to SBC after each meeting

details the contacts between AT&T and SBC on the LLN problem since July 2002, and in that chronology, SBC is listed as clearly stating (and never disputing) that the “data bash” would address the LLN problem and double billing.⁸

12. While the “data bash” had been under discussion for several months, SBC did not conduct the data bash until late January. In conversations preceding the “data bash,” SBC asked AT&T if it would be willing to discuss settling the billing issues, presumably in connection with late line loss notices.⁹ AT&T responded that it could not possibly consider settlement offers until it had received information from SBC concerning the amounts at issue and supporting data.

13. SBC finally conducted the UNE-P billing “data bash” during the weekend of January 25-26, 2003. As discussed above, while this data bash was described to AT&T as pertaining to billing issues related to late line loss notices, SBC has stated elsewhere that the “data bash” had two goals. *See* Flynn Decl. ¶ 9 n.6. First, in 2001-02, SBC had converted UNE-P billing from the Ameritech Customer Information Service (“ACIS”) system to the CABS system and was conducting what it called a “post-implementation, quality assurance validation process to ensure synchronization of the CABS billing and provisioning databases.” SBC Accessible Letter CLECAM 02-509 (November, 21, 2002) (“SBC Reconciliation Accessible Letter”). SBC stated that it was comparing its CABS UNE-P records to its ACIS records used for provisioning to determine if its CABS

⁸ *See* AT&T Issues List, Item No. 4 (entries on 11/18/02, 12/17/02, and 1/10/03 discuss data bash in connection with LLN and double billing situation) (attached hereto as Confidential Attachment 1).

⁹ *Id.* (11/18/02, 12/3/03, 12/17/02, 1/10/03, 1/17/03 entries reference possible settlement of issues).

UNE-P records were accurate and conformed to the information in the ACIS system.

Flynn Dec. ¶ 9 n.6. The SBC Reconciliation Accessible Letter also stated that any adjustments for added or dropped circuits would be reflected on the CLECs' next wholesale bill: "Should circuits be added or deleted from your accounts, appropriate Other Charges and Credits ("OC&C") Statements will be generated to properly reflect the billing. UNE-P CABS bills generated after the reconciliation will reflect these OC&C Statements" Second, in connection with the UNE-P conversion to CABS billing, SBC stated that it had removed non-billable UNE-P feature USOC codes from CABS UNE-P CSRs on a temporary basis in June 2002 to facilitate the ACIS-to-CABS conversion process. The second part of the "data bash" replaced those non-billable USOC codes on customer CSRs. Flynn Decl. ¶ 9 n.6; SBC Reconciliation Accessible Letter.

14. On February 5, SBC provided AT&T a one page UNE-P Reconciliation Financial Summary (the "Data Bash Summary"), which purports to show that AT&T owes SBC approximately \$1.36 million on a region-wide basis.¹⁰ In response to

¹⁰ The Data Bash Summary provides AT&T-specific data on a region-wide and state-by-state basis and is attached hereto as Attachment 2. On a region-wide basis, SBC had added or dropped 58,000 circuits, and in Michigan had added 14,800 UNE-P circuits and had deleted approximately 8300 UNE-P circuits.

On a region-wide basis, SBC changed more than 6.3 million USOC codes relating to AT&T customers in the "data bash." Without information on the number of non-billable USOC codes added to the UNE-P CSRs, it is impossible to determine the number of USOC codes added or deleted as a result of SBC's "quality assurance" process.

In the Dash Bash Summary, the first column lists the CLEC, and for AT&T the data is broken out on a residential customer ("LOA-ATT") and business customer ("TPM-TCG") basis. The second column lists the number of USOC codes added to or deleted from customer CSRs. Many of these USOC codes are associated with circuits added or dropped in reconciling the UNE-P CABS records to the ACIS records, and a portion of the "USOCs Added" represent non-billable USOC codes restored to customer CSRs after being temporarily deleted last year. The

questions from DOJ, SBC also subsequently filed in this proceeding a one-page description of the “data bash” and a summary of its results.¹¹

15. The one-page financial summary contained no supporting documentation for SBC’s claim that AT&T owes it almost \$1.4 million. Yet SBC made clear to AT&T that these charges would appear on the February and March wholesale bills. Moreover, SBC took the position that AT&T had waived its right to settle these disputed amounts because AT&T had been unwilling to consider settlement in December (when AT&T did not even have information on the amounts claimed to be owed, much less any supporting documentation).

16. After receipt of this information from SBC, AT&T wrote to a letter to SBC disputing the amount claimed by SBC and invoking the dispute resolution provisions of the AT&T/SBC Interconnection Agreement.¹² The AT&T Billing Letter highlighted SBC’s failure to provide any supporting information to justify its claim as to amounts allegedly owed and disputed SBC’s right to collect for amounts that it had failed to bill on a timely and accurate basis and without supporting information, as required by the AT&T/SBC Interconnection Agreement. The AT&T Billing Letter noted that the “data bash” was yet another failed attempt to address the ongoing billing problems associated

third column sets forth the results of the UNE-P CABS reconciliation to the ACIS records. The fourth and fifth columns set forth the Other Charges and Credits, which are generally the nonrecurring cost of the added and deleted USOCs. These charges are listed as debits, credits, and on a net basis. The final two columns set forth the prospective monthly recurring charges for the circuits and USOCs added and deleted as a result of the reconciliation process.

¹¹ Letter from Cynthia J. Mahowaid, SBC, to Michael Hirrel, Antitrust Division, DOJ (Feb. 15, 2003) (“SBC Data Bash Letter”) (attached hereto as Attachment 3).

¹² See Letter from Sarah DeYoung, AT&T, to Thomas Harvey, SBC (February 24, 2003) (“AT&T Billing Letter”) (attached hereto as Attachment 4).

with LLNs and noted the ongoing impact of SBC's line loss notification problems on AT&T's billing.¹³ AT&T also disputed SBC's claim that AT&T had somehow surrendered its right to contest or negotiate the claimed amounts, particularly as SBC had never made a settlement offer and had failed to provide supporting information to allow AT&T to review the matter.

17. The day after AT&T sent its letter to SBC, SBC provided limited, inadequate supporting documentation. The documentation consisted of a list of telephone numbers sorted by each carrier's ACNA with a notation that circuits had been added or dropped and a separate file of adjusted USOC codes. The list of telephone numbers merely provides which circuits were added or dropped, but does not provide the date on which the change was made. Without that date, it is impossible to determine if SBC has billed the matter correctly. The listing of affected USOC codes is similarly of limited use because the changed USOC codes are not correlated with telephone numbers. Moreover, it is not clear that SBC has applied the correct rates to the USOC charges, as these rates changed during the period covered by the reconciliation, and the failure to charge the proper rate over time would result in misbilled amounts.

18. SBC responded to the AT&T Billing Letter on February 28, 2003.¹⁴ In that letter, SBC stated for the first time that the "data bash" "was not related to line loss notices," notwithstanding the statements made by SBC personnel dealing directly with AT&T on

¹³ The AT&T Billing Letter noted that SBC had also "intentionally withheld Billing Completion Notices (BCNs) to AT&T while it was conducting its 'data bash' without CLEC knowledge or concurrence." This, of course, is a violation of SBC's change management obligations. *See generally* AT&T Comments 24-26.

¹⁴ Letter from Becky Krost, SBC, to Sarah DeYoung, AT&T (February 28, 2003) (attached

the line loss issues in the July 2002-January 2003 timeframe. At this point, both because SBC had made conflicting representations to AT&T about the purpose of the “data bash” and because the underlying data provided by SBC is so inadequate, it is unclear whether erroneous billing associated with late line loss notifications is reflected, in whole or in part, within the “data bash” that SBC has conducted.

19. Indeed, while AT&T has only had limited opportunity to review the “data bash” supporting documentation, it appears that at least some of the telephone numbers for which AT&T received late line loss notices in November and December match telephone numbers included in the data bash. Moreover, in response to problems identified by BearingPoint Exception 74 (relating to line loss notices in the OSS test), SBC stated that some of the missing LLNs were due to a coding error which misprovisioned orders as new instead of conversion orders. Because these orders were erroneously coded as new, no LLN, late or otherwise, was ever sent to the losing carrier on these orders. While SBC has claimed that this error has been fixed, SBC's admission highlights the difficulty in determining the extent of the LLN problem and billing errors that result therefrom. If, in fact, there are a number of LLNs for which AT&T has never received an LLN, AT&T would have no way of knowing whether it has double billed the customer, whether those missing LLNs resulted in wholesale billing inaccuracies, or whether those missing LLNs were captured in the ACIS-to-CABS data bash.

hereto as Attachment 5).

III. SBC'S "DATA BASH" REVEALS MASSIVE PROBLEMS WITH SBC'S BILLING OPERATIONS.

20. Even assuming that SBC is now correct in stating that its "data bash" was not designed to address the impact of its LLN failures, the results of the data bash are still of great concern to AT&T. SBC's "data bash" demonstrates that SBC has other profound billing problems. According to the SBC Data Bash Letter, approximately 76,000 UNE-P circuits were added and 62,000 UNE-P circuits were deleted for 37 CLECs in Michigan. That represents a total of 138,000 UNE-P circuits in a state with fewer than one million UNE-P lines. DOJ Eval. 11 n.47. This error rate represents a staggering number of customers that were not properly reflected in their CLEC's wholesale bills.

21. The "Circuits Deleted" represent lines that were still being billed by SBC to a CLEC even though the customers no longer received that CLEC's service. For AT&T, there were over 8300 "Circuits Deleted" in Michigan. If SBC is wrong, and some of these adjustments are related to late LLNs, then these lines represent potential double billing situations, as AT&T may not have received the LLN from SBC with the notice to cease billing such customers.

22. A different problem exists for the 14,800 "Circuits Added" to AT&T's wholesale bills for Michigan. These lines represent existing AT&T customers that SBC was not billing to AT&T.

23. In the SBC Data Bash Letter, SBC claims that the errors occurred because the ACIS provisioning records "did not match" the CABS billing records. As a result, "new service order activity on those circuits sometimes could not post mechanically, and would

fall out for manual handling.” SBC Data Bash Letter 2. As a result of the “data bash,” SBC claims that all the ACIS and CABS records have now been reconciled and that “future service order activity for these UNE-P circuits should post without the need of manual handling, and billing inaccuracies resulting from the lack of synchronization between ACIS and CABS on these UNE-P circuits should be eliminated.” *Id.* This is not correct. All the “data bash” has done is to reconcile two sets of internal SBC records; it did not address how these SBC records came to be inconsistent in the first place or examine the role of various problems with SBC’s systems, including the ongoing LLN problems, in the billing inaccuracies.¹⁵ Until these issues are addressed, there can be no assurance that these billing problems are resolved, and this simply may be setting the stage for future “data bashes.”

24. The “data bash” also has a significant financial impact to affected CLECs. As SBC admits, the billing errors affected 37 Michigan CLECs. The 138,000 revised circuits are causing SBC to issue over \$16.9 million in billing changes (\$9.3 million in credits and \$7.6 million in debits) that must be reviewed by these CLECs to compare their wholesale bills with their customer’s activity. SBC seeks to spin the numbers to claim that the net impact is only \$1.7 million in credits, but that is not the relevant figure. First, as is painfully obvious from AT&T’s experience, not all of the 37 affected CLECs can expect to receive credits resulting from SBC’s errors. Second, regardless of whether

¹⁵ The “data bash” also does not reveal the full extent of SBC’s billing problems. Although the data reconciliation extends back to August 2001, SBC debited only those amounts as permitted by the AT&T/SBC Interconnection Agreement, which limits back billing to only 120 days in Michigan, Wisconsin, and Indiana and one year in Ohio and Illinois. Thus, if all circuits added and circuits deleted had been considered, the numbers of incorrectly billed circuits would have been higher still.

the amount to be adjusted is a debit or a credit, all of the changes must be reviewed by the affected CLECs to determine that the wholesale bills match the customer's records and activity. However, as noted above, SBC has not provided sufficient information to enable CLECs to perform that review. Moreover, such reviews involve substantial time and resources to conduct. The inevitable discrepancies resulting from these reviews will require the affected CLECs to negotiate individually with SBC and resort to the dispute resolution process, which can be very time consuming and costly. In short, CLECs will likely incur millions of dollars in expenses resolving these billing problems with SBC.

25. Without more detailed supporting information, it is impossible to draw conclusions about the degree of SBC's billing problems, except to state that the information to date demonstrates that these problems are substantial. Because the claimed debits owed to SBC are the result of its inability to provide timely and accurate wholesale bills, the appropriate remedy is for SBC to absorb these costs.

IV. CONCLUSION

26. SBC's continuing problems with inaccurate or untimely LLNs causing double billing and SBC's recent "data bash" show that SBC has not complied with its obligation to provide accurate wholesale bills to CLECs. SBC cannot be found to comply with this obligation until it can demonstrate that it can provide accurate and timely wholesale bills to AT&T and other CLECs.

VERIFICATION

I declare under penalty of perjury that the facts stated herein are true and correct, to the best of my knowledge, information, and belief.

/s/ Sarah DeYoung
Sarah DeYoung

Date: March 4, 2003

VERIFICATION

I declare under penalty of perjury that the facts stated herein are true and correct, to the best of my knowledge, information, and belief.

/s/ Shannie Marin
Shannie Marin

Date: March 4, 2003

Attachment 1
Redacted – For Public Inspection

Attachment 2

UNE-P Reconciliation Financial Summary All States

State	ACNA/CLEC	USOCs Added	USOCs Deleted
All States by CLEC			
	TPM - TCG	621,456	28,891
	LOA - AT&T	5,647,216	43,950

OC&C Debits	OC&C Credits	Net OC&C
\$2,238,751.46	(\$823,897.74)	\$1,414,853.72
\$632,505.81	(\$697,413.98)	(\$64,908.17)

New MRC Debits	New MRC Credits	New MRC Impact
\$271,614.78	(\$94,252.00)	\$175,049.57
\$254,252.09	(\$150,271.45)	\$103,892.01

UNE-P Reconciliation Financial Summary ILLINOIS

State	ACNA/CLEC	USOCs Added	USOCs Deleted
IL			
	LOA - AT&T	2,016,527	12,233
	TPM - TCG	332,491	14,607

OC&C Debits	OC&C Credits	Net OC&C
\$87,440.77	(\$148,923.08)	(\$61,482.31)
\$1,719,704.42	(\$457,344.28)	\$1,262,360.14

New MRC Debits	New MRC Credits	New MRC Impact
\$54,613.99	(\$42,166.21)	\$12,447.78
\$177,546.75	(\$50,197.36)	\$127,349.39

UNE-P Reconciliation Financial Summary INDIANA

State	ACNA/CLEC	USOCs Added	USOCs Deleted
IN			
	LOA - AT&T	64,924	681
	TPM - TCG	9,126	144

OC&C Debits	OC&C Credits	Net OC&C
\$5,990.53	(\$6,452.08)	(\$461.55)
\$1,071.62	(\$1,034.03)	\$37.59

New MRC Debits	New MRC Credits	New MRC Impact
\$2,718.24	(\$2,896.15)	(\$177.91)
\$842.36	(\$402.66)	\$439.70

UNE-P Reconciliation Financial Summary MICHIGAN

State	ACNA/CLEC	USOCs Added	USOCs Deleted
MI			
	LOA - AT&T	2,237,541	23,144
	TPM - TCG	168,236	10,204

OC&C Debits	OC&C Credits	Net OC&C
\$430,470.67	(\$485,536.97)	(\$55,066.30)
\$213,419.49	(\$275,255.46)	(\$61,875.97)

New MRC Debits	New MRC Credits	New MRC Impact
\$134,127.57	(\$75,513.07)	\$58,614.50
\$57,076.64	(\$31,665.67)	\$25,410.97

UNE-P Reconciliation Financial Summary OHIO

State	ACNA/CLEC	USOCs Added	USOCs Deleted
OH			
	LOA - AT&T	1,326,501	7,885
	TPM - TCG	107,058	3,842

OC&C Debits	OC&C Credits	Net OC&C
\$107,768.81	(\$56,358.78)	\$51,410.03
\$303,214.98	(\$89,554.76)	\$213,660.20

New MRC Debits	New MRC Credits	New MRC Impact
\$62,579.61	(\$29,668.26)	\$32,911.35
\$34,739.79	(\$11,528.79)	\$23,211.00

UNE-P Reconciliation Financial Summary WISCONSIN

State	ACNA/CLEC	USOCs Added	USOCs Deleted
WI			
	LOA - AT&T	1,723	7
	TPM - TCG	4,545	94

OC&C Debits	OC&C Credits	Net OC&C
\$835.03	(\$143.07)	\$691.96
\$1,340.95	(\$669.19)	\$671.76

New MRC Debits	New MRC Credits	New MRC Impact
\$212.68	(\$27.76)	\$184.92
\$1,409.24	(\$457.52)	\$951.72

Attachment 3



Cynthia L. Mahowald
Vice President and
General Counsel

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February 15, 2003

Michael Hirrel, Esq.
Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
1401 H Street NW, Suite 8000
Washington, DC 20530

Re: Michigan 271 Application, WC Docket No. 03-16

Dear Mike:

Pursuant to your request, attached is a response to your questions on the CABs reconciliation. Please let me know if you have any questions or need any additional information. I apologize for the delay in providing you with this information.

Sincerely,

Enclosure

cc: Brent Marshall
Layla Seirafi-Najar

As discussed in the Affidavit of Michael Flynn, in October 2001 SBC Midwest completed a conversion process to consolidate billing for UNE-P charges into CABS.¹ As a final quality assurance measure, in January 2003 SBC Midwest conducted a comparison of its CABS UNE-P billing records with the ACIS provisioning records for those same UNE-P lines.² The bulk of the results of this one-time reconciliation will appear in CLEC bills for February.

In the aggregate, approximately 76,000 UNE-P circuits were added and 62,000 UNE-P circuits were deleted from billing for 37 CLECs operating in Michigan. The addition and deletion of UNE-P circuits resulted in the issuance of approximately \$9.3 million in credits and \$7.6 million in debits (with a net impact of \$1.7 million in credits) to the impacted CLECs. Prospectively, SBC Midwest estimates that the addition/deletion of UNE-P circuits will result in an aggregate increase in billing for monthly recurring charges of approximately \$220,000 (or less than 1.4% of total UNE-P Michigan billing for December 2002). SBC Account Team representatives have contacted impacted CLECs to provide the results of the reconciliation and to work with them to resolve any outstanding issues.

Before the reconciliation, the provisioning (ACIS) and billing (CABS) records for the "added and deleted" UNE-P circuits referenced above did not match.³ As a result, new service order activity on those circuits sometimes could not post mechanically, and would fall out for manual handling. Now that the ACIS and CABS records have been synchronized, future service order activity for these UNE-P circuits should post without need of manual handling, and billing inaccuracies resulting from the lack of synchronization between ACIS and CABS on these UNE-P circuits should be eliminated. Further, the database reconciliation should resolve disputes filed by CLECs for billing inaccuracies related to lack of synchronization between ACIS and CABS for the UNE-P circuits in question.

Also, the BearingPoint Test for UNE-P confirmed that SBC Midwest's CABS system is producing accurate and complete bills for UNE-P. See *BearingPoint Final Report test points 9-26 and 9-29 at pages 1009-1010* (Appendix C Tab 114). In test reports produced by BearingPoint for the states of Illinois, Ohio and Wisconsin subsequent to the migration of UNE-P billing to CABS, BearingPoint determined that SBC Midwest posts UNE-P service orders to CABS in a timely manner, and that UNE-P billing produced by CABS is complete and accurate. These results apply equally to Michigan.

¹ See, Affidavit of Michael Flynn, ¶ 4, fn. 4 (Flynn Affidavit). This project was undertaken at the request of the CLECs. Prior to the conversion, UNE-P switch port charges were billed out of RBS, while UNE-P loop charges were billed out of CABS.

² See, Flynn Affidavit, fn. 6.

³ UNE-P service orders first post to ACIS, and then post to CABS. See, Flynn Affidavit, ¶ 9.

Attachment 4



Sarah De Young
Division Manager
Local Services and Access Management

Room 2107
785 Folsom Street
San Francisco, CA 94107
Phone: 415 442 5506

February 24, 2003

By Email, Fax and First Class Mail

Mr. Thomas Harvey
Vice President - Industry Markets
SBC Corp.
350 N. Orleans
Floor 3
Chicago, IL 60654

Dear Thomas,

This letter is sent to notify SBC that, pursuant to Section 28.2 of the AT&T/Ameritech Michigan Interconnection Agreement (and similar provisions in the other Midwest region states) AT&T disputes any and all claims for additional UNE charges related to SBC's recent, industry-wide billing "data bash" to rectify errors caused by Ameritech's repeated failures to provide timely line loss notices in the SBC Midwest (Ameritech) region.

As you well know, SBC's systemic failure to provide accurate, timely and complete line loss notifications has been a problem that has plagued AT&T since it has entered the local markets in the Ameritech region. Instead of fixing the problem, however, SBC has simply generated a litany of excuses and applied a series of ineffective band-aid type solutions, the result of which is that line loss notices problems continue to this day. SBC's "data bash" is the latest in a long line of problems associated with the line loss notification.

As Shannie Marin of my organization and Cathy Wyban of the Account Team have discussed, the one-page spreadsheet that SBC produced to AT&T, which consists of nothing but the bottom-line results of the "data bash", is clearly inadequate. As of yet, SBC has provided no underlying documentation whatsoever to support its claims regarding the amounts owed, and has nevertheless stated that the debit amounts will appear on next month's wholesale bill. It also appears to be inaccurate. For example, for AT&T/Illinois, 2,016,527 USOCs were added to the billing, yet only 3,529 circuits were added, which implies that over 501 USOCs were added per circuit. Cathy's email attempting to explain this discrepancy (attached) seems to imply that SBC altered accounts not affected by late line loss notices, which if true, only adds confusion in trying to decipher this already-confusing data.

February 24, 2003 Letter to Thomas Harvey
Page 2

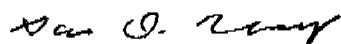
But even if this documentation was more adequate and credible, the basic premise underlying the "data bash" -- that SBC is entitled to collect any underpayments to it as a result of its failure to generate accurate and timely line loss notifications -- is severely flawed. Under the applicable ICAs, SBC has an obligation to provide AT&T with an accurate and current bill. See, e.g., Michigan ICA § 27.8. SBC's repeated failures to provide timely and accurate LLNs has caused it to be in breach of these ICA provisions. And as has been documented and discussed in multiple industry forums, these failures have had a material adverse effect on AT&T, adding significant costs to AT&T's local operations and injuring AT&T's reputation in the marketplace.

To add insult to injury, AT&T recently learned that SBC also intentionally withheld Billing Completion Notices (BCNs) to AT&T while it was conducting its "data bash" without CLEC knowledge or concurrence. As you know, delayed BCNs cause significant and additional harmful effects on AT&T's local operations.

Finally, I understand that Cathy Wyban has inexplicably advised Shannie Marin that AT&T has "given up" its right to settle or negotiate this issue further. As a result, AT&T plans to withhold payments on future wholesale bills to avoid paying these improper and unjustified charges. AT&T also reserves its rights to challenge the Monthly Recurring Charge (MRC) adjustments, as well as adjustments to usage billing, that SBC alleges are also due as a result of late line loss notices.

Please let me know if you have questions or need additional information regarding these issues.

Sincerely,



Sarah DeYoung
Division Manager –
Local Services and Access Management

cc: Bill West, AT&T
Bill Myers, AT&T

Attachment 5

VIA EMAIL AND U.S. MAIL

Becky Krost
Director-Industry Markets

SBC Telecommunications, Inc.
311 S. Akard, Rm. 651
Dallas, TX 75202-5398
Phone 214 464-3757
Fax 214 858-0281



February 28, 2003

Ms. Sarah DeYoung, Division Manager
Local Services and Access Management
AT&T
127 Firestone Dr.
Walnut Creek, CA 94598

Dear Sarah:

This is in response to your letter of February 24, 2003. This letter outlined AT&T's dispute of additional UNE charges related to SBC's recent "data bash" related to "line loss notices" in SBC Midwest. As we discussed earlier this week, the recent "data bash" was not related to line loss notices but was the final phase of the UNEP CABS Billing Conversion Project. The CABS conversion effort was originally initiated by the CLEC community to establish billing consistency between SBC regions.

In an effort to give some background on this issue, SBC Midwest first notified the CLEC Community of this project in May 2001 through Accessible Letter (AL) CLECAM01-148. Continual updates and information on this project were provided through additional Accessible Letters, conference calls and CLEC Forums. For your reference the AL's were CLECAM01-189, CLECAM01-397, CLECAM02-017, CLECAM02-163, and CLECAM02-509. As outlined in AL CLECAM02-509, the final reconciliation of the CABS billing database for UNE-P was to be performed in January 2003. This reconciliation ensured the synchronization of the CABS billing and provisioning databases.

In June 2002, the non-billable UNE-P features had been removed from the CABS Customer Service Records. AL CLECAM02-163 announced this temporary removal and AL CLECAM02-509 advised that the non-billable features would be reinstated during the reconciliation in January 2003. This reinstatement of the non-billable UNE-P features back to CABS is the reason you noticed the large number of USOCs. Since these USOCs were applicable to all circuits, comparing the total numbers to only the net circuits added would not be accurate. There was no financial impact from the reinstatement of these features.

The supporting documentation for the net charges was provided to Shannie Marin and included the individual telephone number of all circuits either inserted or deleted as a result of the reconciliation project and a list of the USOCs that were used for the comparison. This list included the standard list of USOCs that could apply to any UNEP circuit. The detail for each circuit, including the actual USOCs and applicable dates, appears on the OC&C portion of the bill. As you know this project only adjusted applicable Monthly Recurring Charges (MRCs) and no Non-recurring Charges (NRCs) were applied.

As to your comments on the Billing Completion Notices, I understand this issue is being addressed by our OSS Team. I hope this clarification that the recent billing in question was associated with UNE-P CABS Billing Conversion Project and not line loss notices is helpful. If there are any further questions, please let me know.

Sincerely,

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Michigan Bell Telephone Company, and)	WC Docket No. 03-16
Southwestern Bell Communications Services,)	
Inc. for Provision of In-Region, InterLATA)	
Services in Michigan)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

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Acting Assistant Attorney General
Antitrust Division

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Margaret A. Ward
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James Davis-Smith
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Paralegals

February 26, 2003

Telecommunications and Media
Enforcement Section

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DOJ Nevada Evaluation	Evaluation of the U.S. Department of Justice, <i>In re: Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Nevada</i> , FCC WC Docket No. 03-10 (Feb. 21, 2003), available at < http://www.usdoj.gov/atr/public/comments/sec271/sec271.htm >.
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Short Citation	Full Citation
FCC Orders, Reports, and Related Materials	
<i>FCC Arkansas/Missouri Order</i>	Memorandum Opinion and Order, <i>In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri</i> , 16 FCC Rcd 20,719 (Nov. 16, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
<i>FCC California Order</i>	Memorandum Opinion and Order, <i>In re: Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California</i> , FCC WC Docket No. 02-306 (Dec. 19, 2002), available at 2002 WL 31842456 and < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
<i>FCC Georgia/Louisiana Order</i>	Memorandum Opinion and Order, <i>In re: Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana</i> , 17 FCC Rcd 9018 (May 15, 2002), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
<i>FCC Kansas/Oklahoma Order</i>	Memorandum Opinion and Order, <i>In re: Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd 6237 (Jan. 19, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >, <i>aff'd in part, remanded in part, Sprint Communications Co. v. FCC</i> , 274 F.3d 549 (D.C. Cir. 2001).
<i>FCC Pennsylvania Order</i>	Memorandum Opinion and Order, <i>In re: Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , 16 FCC Rcd 17,419 (Sept. 19, 2001), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
<i>FCC Texas Order</i>	Memorandum Opinion and Order, <i>In re: Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas</i> , 15 FCC Rcd 18,354 (June 30, 2000), available at < http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications >.
State Commission Orders and Related Materials	
BearingPoint OSS Evaluation Project Report	BearingPoint, <i>OSS Evaluation Project Report</i> (Oct. 30, 2002), attached to SBC Br. App. C as Tab 114.

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
Illinois ALJ Memorandum	Memorandum, <i>Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act</i> , Illinois CC Docket No. 02-0160 (Sept. 11, 2002), available at < http://eweb.icc.state.il.us/e-docket/ >.
Illinois CC Certificate of Action	Certificate of Commission Action, <i>Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act</i> , Illinois CC Docket No. 02-0160 (Sept. 12, 2002), available at < http://eweb.icc.state.il.us/e-docket/ >.
Illinois CC Line Loss Notice Order	Order, <i>Z-Tel Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act</i> , Illinois CC Docket No. 02-0160 (May 8, 2002), available at < http://eweb.icc.state.il.us/e-docket/ >.
Michigan PSC Further Improvements Order	Opinion and Order, <i>In re: The Commission's own motion, to consider SBC's, f/k/a Ameritech Michigan, compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996</i> , Michigan PSC Case No. U-12320 (Jan. 13, 2003), attached to SBC Br. App. C as Tab 134.
Michigan PSC Letter Comments	Letter from Michigan Public Service Commission to FCC (Jan. 13, 2003).
Michigan PSC Report	Report of the Michigan Public Service Commission, <i>In re: The Commission's own motion, to consider SBC's, f/k/a Ameritech Michigan, compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996</i> , Michigan PSC Case No. U-12320 (Jan. 13, 2003), attached to SBC Br. App. C as Tab 133.
SBC Compliance and Improvement Plan Proposals	SBC's Compliance and Improvement Plan Proposals, <i>In re: The Commission's own motion, to consider SBC's, f/k/a Ameritech Michigan, compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996</i> , Michigan PSC Case No. U-12320 (Feb. 13, 2003), available at < http://www.cis.state.mi.us/mpsc/comm/271/12320comp-plan.pdf >.
SBC's Application and Related Filings	
Ernst & Young Dolan/Horst Aff.	Affidavit of Daniel Dolan and Brian Horst Regarding Performance Measurement Audits, attached to SBC Br. App. A as Tab 8.
SBC Billing <i>Ex Parte</i>	SBC Communications, Inc., SBC <i>Ex Parte</i> Submission to the FCC, WC Docket No. 03-16 (Feb. 19, 2003).
SBC Br.	Brief in Support of Application by SBC for Provision of In-Region, InterLATA Services in Michigan, <i>In re: Application by SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Jan. 16, 2003).
SBC Ehr Aff.	Affidavit of James D. Ehr, attached to SBC Br. App. A as Tab 9.

INDEX OF FULL CITATIONS	
Short Citation	Full Citation
SBC Heritage Aff.	Affidavit of Deborah O. Heritage, <i>attached to</i> SBC Br. App. A as Tab 16.
Third-Party Comments and Affidavits/Declarations	
AT&T Comments	Comments of AT&T Corp., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
AT&T DeYoung/Connolly Decl.	Joint Declaration of Sarah DeYoung and Timothy M. Connolly, <i>attached to</i> AT&T Comments as Tab C.
AT&T DeYoung/Willard Decl.	Joint Declaration of Sarah DeYoung and Walter W. Willard on Behalf of AT&T Corp., <i>attached to</i> AT&T Comments as Tab A.
McLeodUSA Comments	Comments of McLeodUSA Telecommunications Services, Inc., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
TDS Metrocom Comments	Comments of TDS Metrocom, LLC, <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
TDS Metrocom Cox Aff.	Affidavit of Rod Cox, <i>attached to</i> TDS Metrocom Comments as Tab A.
WorldCom Comments	Comments of WorldCom, Inc., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg, <i>attached to</i> WorldCom Comments as Tab A.
Z-Tel Comments	Opposition of Z-Tel Communications, Inc., <i>In re: Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan</i> , FCC WC Docket No. 03-16 (Feb. 6, 2002).
Z-Tel Walters Decl.	Declaration of Ron A. Walters on Behalf of Z-Tel Communications, Inc., <i>attached to</i> Z-Tel Comments as Tab A.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Michigan Bell Telephone Company, and)	WC Docket No. 03-16
Southwestern Bell Communications Services,)	
Inc. for Provision of In-Region, InterLATA)	
Services in Michigan)	

EVALUATION OF THE
UNITED STATES DEPARTMENT OF JUSTICE

Introduction and Summary

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996¹ (“the 1996 Act”), submits this Evaluation of the application filed on January 16, 2003, by SBC Communications, Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. to provide in-region, interLATA services in Michigan.

This application to the Federal Communications Commission (“FCC” or “Commission”) is the second for Michigan. It is the first application, except for the earlier Michigan application, for SBC’s Midwest region, comprising the five states – Michigan, Ohio, Indiana, Illinois, and Wisconsin – in which Ameritech was the original regional Bell Operating Company (“BOC”). This application follows SBC’s successful applications in other regions for long distance entry in Texas, Kansas, Oklahoma, Arkansas, Missouri, and California.²

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

² See generally *FCC Texas Order*, *FCC Kansas/Oklahoma Order*, *FCC Arkansas/Missouri Order*, *FCC California Order*. SBC’s application for long distance entry in Nevada is pending at the FCC. See DOJ Nevada Evaluation.

As the Department has explained, in-region, interLATA entry by a regional BOC should be permitted only when the local markets in a state have been “fully and irreversibly” opened to competition.³ This standard seeks to measure whether the barriers to competition that Congress sought to eliminate with the 1996 Act have in fact been fully eliminated and whether there are objective criteria to ensure that competitive local exchange carriers (“CLECs”) will continue to have nondiscriminatory access to the facilities and services they will need from the BOC in order to enter and compete in the local exchange market. In applying its standard, the Department considers whether all three entry paths contemplated by the 1996 Act – facilities-based entry involving the construction of new networks, the use of the unbundled elements of the BOC’s network (“UNEs”), and resale of the BOC’s services – are fully and irreversibly open to competitive entry to serve both business and residential customers.

The Department believes that SBC has made significant strides in opening its Michigan markets, as demonstrated by the levels of entry achieved to date. Nevertheless, serious concerns, suggesting that the progress made may not be irreversible, remain at this time. These concerns preclude the Department from supporting this application based on the current record. The Department does not, however, foreclose the possibility that the Commission may be able to determine that these concerns have been adequately addressed prior to the conclusion of its review.

I. State Commission Proceedings

The Michigan Public Service Commission (“Michigan PSC”) has facilitated the development of competition in the local telecommunications markets by establishing wholesale performance measurements⁴; conducting extensive pricing proceedings that established

³ See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

⁴ Michigan PSC Report at 5-6.

wholesale rates for UNES⁵; and adopting a Performance Remedy Plan.⁶ The Michigan PSC's review of SBC's Section 271 filing included an independent third-party test of SBC's Operations Support Systems ("OSS") by BearingPoint (f/k/a KPMG Consulting) and Hewlett Packard.⁷ BearingPoint's report to the Michigan PSC indicates that SBC has satisfied 465 of the 498 applicable Processes and Procedures Review and Transaction Verification and Validation test criteria, the portion of the test focusing on OSS and related support processes. Testing for the Performance Metrics Reporting criteria is, for the most part, still in progress, with many Observations and Exceptions open and unresolved.⁸ To supplement the BearingPoint performance measures evaluation, SBC submitted reports by Ernst & Young on examinations of two SBC attestations: one regarding the compliance of SBC's performance reports with the relevant business rules and one regarding the effectiveness of controls over the accuracy and completeness of reported data.⁹ SBC subsequently submitted to the Michigan PSC two additional reports by Ernst & Young concerning corrective actions taken by SBC in response to

⁵ *Id.* at 49.

⁶ *Id.* at 142.

⁷ BearingPoint OSS Evaluation Project Report at 9.

⁸ *See id.* at 13; Michigan PSC Further Improvements Order at 3; Michigan PSC Report at 7 ("Nearly half of the applicable BearingPoint testing criteria for [the performance metrics] part of the test remained in a 'Not Satisfied' status and determinations on another 40% of the criteria were as yet undetermined."). The Michigan PSC ordered SBC to address the outstanding Exceptions and Observations in BearingPoint's Processes and Procedures Review and Transaction Verification and Validation tests but decided that for these tests only specified new or refresh tests should be undertaken. For the performance metrics audit, the Michigan PSC decided that "tests should continue unchanged by BearingPoint at this time . . . BearingPoint shall file a report on progress in these tests every other month beginning at the end of February 2003. Once again, the [Michigan PSC] will determine what action, if any, should be taken upon the filing of each of those reports." Michigan PSC Further Improvements Order at 3.

⁹ *See* Ernst & Young Dolan/Horst Aff. ¶¶ 19-20 & Attachs. B-C.

issues found in the initial Ernst & Young reports.¹⁰ The Michigan PSC recommended that the FCC approve SBC's Section 271 application.¹¹

Continuing its commitment to open its local market, and based on its thorough review of the record, the Michigan PSC also adopted an order requiring SBC to develop supplemental compliance and improvement plans as to certain issues.¹² SBC submitted its proposed plans on February 13, 2003. The Michigan PSC further required SBC to participate in collaborative discussions with the CLECs under the PSC's sponsorship on March 4, 2003. SBC must then submit modified compliance and improvement plans on March 13, 2003.¹³ The Department has had the opportunity to review only SBC's proposed plans, filed with the Michigan PSC on February 13, 2003, and, where appropriate, comments on them in this Evaluation. The Commission may have before it at the time of its decision the final compliance and improvement plans.

II. Entry into the Local Telecommunications Markets

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.¹⁴ The Department does

¹⁰ *Id.* ¶¶ 22-24 & Attachs. F-H. BearingPoint's ongoing audit is still covering areas previously examined by Ernst & Young. The issues found by Ernst & Young were the subject of written responses by SBC. Ernst & Young reviewed those responses in its supplementary reports. Michigan PSC Report at 7-9 (describing results of Ernst & Young initial review, including Ernst & Young's findings, *inter alia*, of data "control deficiencies," and Ernst & Young follow-up review of SBC management's assertions regarding corrective actions).

¹¹ Michigan PSC Letter Comments at 1-2. The Michigan PSC qualifies its affirmative recommendation by stating that it "is predicated on the FCC's continuation of policies and rules that allow competitors access to [the] UNE-[platform] for the foreseeable future and throughout an orderly transition to facilities-based competition." *Id.* at 2. WorldCom has submitted a petition for rehearing of the portion of the Michigan PSC's Section 271 decision relating to the pricing of Directory Assistance Listings. WorldCom Comments at 22 & Attach. 3.

¹² Michigan PSC Further Improvements Order at 13.

¹³ *Id.*

¹⁴ *See* DOJ Pennsylvania Evaluation at 3-4 ("The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or

not, however, broadly presume that all three entry tracks – facilities-based, UNEs, and resale – are open or closed on the basis of an aggregate level of entry alone.¹⁵ The following table reports CLEC entry in Michigan in terms of shares of total residential and business lines served and shares of residential and business lines served by means of each mode of entry.

CLEC Entry in Michigan¹⁶

Total Lines¹⁷		5,874,567
Total Bus. Lines		2,518,486
Total Res. Lines		3,356,081
CLEC Shares	% Total Lines	26.0
	% Total Bus.	25.2
	% Total Res.	26.6
	% Bus. Fac-B	18.5
	% Bus. UNE-P	5.7
	% Bus. Resale	1.0
	% Res. Fac-B	2.8
	% Res. UNE-P	23.1
	% Res. Resale	0.7

The amount of entry and the absence of evidence that entry has been unduly hindered by problems with obtaining inputs from SBC lead the Department to conclude that opportunities are

geographic areas within a state, so the Department looks for evidence relevant to each market in a state.” (Footnote omitted.)).

¹⁵ See, e.g., DOJ Georgia/Louisiana I Evaluation at 7; DOJ Missouri I Evaluation at 6-7.

¹⁶ See SBC Heritage Aff. ¶ 8 tbl.1 n.8 & Attach. E at 1, 2, 6. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC’s own network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

¹⁷ Figures report total lines in SBC’s service area in Michigan. There are incumbent local exchange carriers other than SBC serving parts of Michigan.

available to serve business customers via facilities in Michigan. Although residential entry through the UNE-platform, in particular, appears noteworthy, the concerns identified below preclude a conclusion based on the existing record that the local market in Michigan is and will remain open to competitive entry.

III. Change Management Process

SBC's change management process was the subject of extensive argument and consideration at the Michigan PSC.¹⁸ It continues to be a subject of controversy in CLEC Comments before the Commission.¹⁹ The Michigan PSC believed that SBC's process is sufficient to support its Section 271 application. Nevertheless, the Michigan PSC was troubled by this issue. It found that although "SBC did comply with the letter of its change management process," some of SBC's "changes were not announced prior to their implementation and did indeed negatively affect the CLECs."²⁰ The Michigan PSC required SBC to submit a compliance and/or improvement plan to address this issue.²¹

The Department shares the Michigan PSC's concerns. SBC apparently does comply with its formal change management process for major changes, such as new OSS releases.²² CLEC Comments suggest, however, that SBC has often failed to inform the CLECs of other changes in processes, procedures, and policies that significantly affect their operations.²³ These problems

¹⁸ See Michigan PSC Report at 74-76.

¹⁹ See, e.g., AT&T Comments at 24-26; McLeodUSA Comments at 9-14; TDS Metrocom Comments at 21-22; WorldCom Comments at 11.

²⁰ Michigan PSC Further Improvements Order at 10.

²¹ *Id.*

²² See *id.*

²³ AT&T points out, for example, that in late November 2002 SBC changed the manner in which its LSOG 4 ordering system handled certain information fields. The change was made without notice to the CLECs. It caused rejection of some 15,000 AT&T service orders. It was disclosed only after inquiries by AT&T. Processing of AT&T's 15,000 rejected orders was not completed until December 6. AT&T Comments at 12-13; AT&T DeYoung/Willard Decl. ¶¶ 62-64 & tbl.

have occurred, according to the CLECs, in situations when SBC was planning to make these changes, but failed to inform the CLECs,²⁴ and also when the changes were unplanned mistakes. In the latter circumstance, SBC failed to disclose the changes for some time after they were discovered.²⁵ SBC's failures may adversely affect the CLECs' ability to compete. CLEC customers suffer service deficiencies and the CLECs must consume their resources to discover the cause of the deficiencies, when SBC could simply have informed them in the first place.²⁶ When the changes are mistakes, moreover, SBC's failure to inform the CLECs upon discovery deprives SBC of feedback information that could be used expeditiously to correct the situation.²⁷

As noted above, the Michigan PSC has required SBC to submit a remedial plan addressing this issue. The Department supports this action. The Commission, as well as the Michigan PSC, should examine SBC's final plan with some care.²⁸ The Commission should satisfy itself that the final plan adequately addresses the problem.

²⁴ TDS Metrocom alleges that until February 2002, when TDS ordered DSL-capable loops, SBC routinely honored its requests for loop conditioning, including removal of bridged taps. In February, however, SBC changed its policy so that it would no longer remove bridged taps shorter than 2,500 feet. SBC did not inform TDS of this change. TDS discovered the change when its customers began experiencing problems with DSL loop connectivity. Only after TDS's inquiries did SBC issue an accessible letter indicating that, in order to obtain removal of bridged taps shorter than 2,500 feet, CLECs must go through an additional process and incur additional expense. TDS Metrocom Comments at 28; TDS Metrocom Cox Aff. ¶¶ 69-82.

²⁵ AT&T points out that SBC discovered an error in its LSOG 5 ordering system on December 5, 2002. Because of the error, CLECs using LSOG 5 were failing to receive some portion of their billing completion notices. Without these notices, a CLEC cannot be sure that the BOC has successfully posted the order to its billing system, which is necessary before the CLEC can submit some orders to accommodate changes requested by the customers. SBC undertook to correct the error, which it did on January 24, 2003. It did not, however, notify affected CLECs of the error until it issued an accessible letter on January 29, 2003, almost two months after it discovered the problem. In the meantime, AT&T asserts, it had failed to receive thousands of billing completion notices. AT&T Comments at 16-17; AT&T DeYoung/Willard Decl. ¶¶ 91-100.

²⁶ See *supra* notes 23, 24 & 25.

²⁷ See *supra* note 25.

²⁸ SBC's proposed change management improvement plan contains several positive steps. It apparently does not, however, address SBC's failure to inform CLECs of mistakenly introduced changes and of the efforts SBC is undertaking to correct those mistakes. SBC's Quality Assurance Program for this plan, moreover, provides for reviews to be conducted only "on a quarterly basis for six months." SBC Compliance and Improvement Plan Proposals Attach. F at 6. The Commission and the Michigan PSC should consider whether a more extensive review is necessary to prevent the recurrence of problems.

IV. Operations Support Systems

CLEC commenters raise a number of issues concerning SBC's Operations Support Systems as employed in Michigan.²⁹ Some of these issues are matters of concern and merit the Commission's attention. SBC has, as the Michigan PSC finds, made substantial progress in this area. Nevertheless, as the Michigan PSC also notes, "certain performance measures remain deficient and certain interfaces and processes still require additional work."³⁰

A. Line Loss Notification

CLEC commenters vigorously argue that SBC's performance in issuing line loss notifications has been incomplete, untimely, and unreliable.³¹ The issue was similarly argued before the Michigan PSC, which noted the progress in this area made by SBC.³² Nevertheless, the Michigan PSC noted SBC's history of problems in this area. Until more experience is gained, the Michigan PSC observed, it cannot "assume that a trouble free environment will now exist."³³ The Michigan PSC responded to this uncertainty by requiring SBC to submit a plan that identifies a series of specific improvement measures.³⁴

The Department shares the Michigan PSC's concerns, and believes that the Commission should carefully examine SBC's final improvement plan. Precise delivery of line loss

²⁹ See, e.g., AT&T Comments at 10-21; WorldCom Comments at 2-13; Z-Tel Comments at 2-7.

³⁰ Michigan PSC Report at 76.

³¹ AT&T DeYoung/Willard Decl. ¶¶ 109-32; WorldCom Lichtenberg Decl. ¶¶ 20-22; Z-Tel Walters Decl. ¶¶ 5-10.

³² Michigan PSC Report at 68. "At this time," the PSC concluded, SBC "has met its line loss obligations in regard to Section 271." *Id.* at 69.

³³ *Id.*

³⁴ Michigan PSC Further Improvements Order at 6. Among other measures, SBC must issue accessible letters and contact individual CLECs within 24 hours after determining that a line loss notification interruption has occurred, issue notices to CLECs upon change of line loss notification procedures, and file periodic reports with the Michigan PSC about line loss issues. SBC's proposed improvement plan reflects these measures. SBC Compliance and Improvement Plan Proposals Attach. D.

notifications is vital for a healthy competitive environment in Michigan. Line loss notifications inform a CLEC when its customers have left for other carriers, either other CLECs or SBC. Unless timely notifications are sent, the CLEC must assume that it still provides service to the customers in question. It will thus bill its now former customers for time in which it had been replaced. The new carriers will also bill the same customers for the service they actually provide, and the customers will be double-billed. The customers naturally will blame the former carrier. Such double-billing, as the Michigan PSC observes, “may have serious negative effects on the reputations of . . . competitive providers.”³⁵ CLECs also consume resources investigating and fixing these avoidable problems.

In their Comments, CLECs report a long list of problems, past and present, related to line loss notifications.³⁶ These problems include missing notifications,³⁷ notifications lacking conversion dates,³⁸ notifications omitting the disconnected telephone number,³⁹ and unreadable notifications.⁴⁰ The problems associated with SBC’s line loss notification system – a system common throughout the Ameritech region – were also the subject of a litigated finding in an

³⁵ Michigan PSC Report at 68-69 (quoting Michigan PSC December 20, 2001, Order in Case No. U-12320). Z-Tel asserts, for example, that it has fielded thousands of complaints from its former customers over double-billing from this cause, and that many such complaints have been filed with regulatory bodies and customer groups. Z-Tel Walters Decl. ¶ 8.

³⁶ The Michigan PSC’s current performance metric concerning line loss notification, MI 13, has only limited utility in measuring the problems about which the CLECs complain. It measures only the proportion of notifications actually sent within one hour of the time a new carrier is assigned, and does not measure instances in which notices are faulty or in which notices are not sent in the first place. *See* SBC Ehr Aff. Attach. A at 187. The Department understands that SBC, the CLECs, and the Michigan PSC are discussing some supplemental line loss notification metrics.

³⁷ Z-Tel Walters Decl. ¶ 6; AT&T DeYoung/Willard Decl. ¶ 111; WorldCom Lichtenberg Decl. ¶ 20.

³⁸ Z-Tel Walters Decl. ¶ 6; AT&T DeYoung/Willard Decl. ¶ 125.

³⁹ AT&T DeYoung/Willard Decl. ¶ 114.

⁴⁰ *Id.* ¶ 117; WorldCom Lichtenberg Decl. ¶ 21. The number of faulty line loss notices appears to be substantial. AT&T asserts that, in the five months from August to December 2002, 10,000 of its line loss records were affected. AT&T DeYoung/Willard Decl. ¶ 131.

action brought by Z-Tel at the Illinois Commerce Commission.⁴¹ The Illinois Commerce Commission found that “Ameritech has unreasonably impaired the speed, quality, or efficiency of services used by Z-Tel through the provisioning of late and inaccurate” line loss notifications, and that these actions “have had an adverse effect on the ability of Z-Tel to provide service to its customers.”⁴²

Although the Illinois Commerce Commission has lifted its order for emergency relief, based on SBC’s plan to fix its systems,⁴³ the possibility that these problems may recur warrants this Commission’s serious attention. The Michigan CLECs allege in this proceeding that they have continued to encounter problems with line loss notification virtually until the present moment.⁴⁴ SBC has made progress in this area, but it has not established a suitable level of performance. To do so, SBC must introduce further evidence sufficient to show that it is currently capable of providing effective wholesale support in this area.

B. Billing Errors

Several CLEC commenters raise issues about the accuracy of, and the ability to audit, SBC bills.⁴⁵ The CLECs’ Comments are short on specifics. It does appear, however, that SBC has had trouble generating accurate bills. This trouble is revealed in a reconciliation that SBC

⁴¹ *Z-Tel Communications, Inc. v. Illinois Bell*, Illinois CC Docket No. 02-0160.

⁴² Illinois CC Line Loss Notice Order at 16.

⁴³ *See* Illinois CC Certificate of Action. *See generally* Illinois ALJ Memorandum.

⁴⁴ *See, e.g.*, WorldCom Lichtenberg Decl. ¶ 21; AT&T DeYoung/Willard Decl. ¶ 126.

⁴⁵ Z-Tel Walters Decl. ¶¶ 11-13; TDS Metrocom Cox Aff. ¶¶ 44-68. WorldCom believes there may be billing problems, but as of the date of its Comments, it had “only just begun to review the accuracy of its wholesale bills.” WorldCom Lichtenberg Decl. ¶ 23-24.

itself recently conducted following consolidation of its billing for UNE-platform into a single billing system.⁴⁶ SBC discovered a significant number of prior billing errors.⁴⁷

In previous Section 271 proceedings, both the Department and the FCC have recognized that proper billing is essential to competition.⁴⁸ The Department noted in its Pennsylvania Evaluation, for example, that “[a]ccurate and auditable electronic bills are an important factor in making local telecommunications markets fully and irreversibly open to competition.”⁴⁹ In the same proceeding, the FCC noted that undependable billing diverts CLEC resources to bill reconciliation and bill correction, hampers CLEC ability to raise capital because improper overcharges are carried on the CLEC’s financial reports, diminishes CLEC capacity to adjust prices and expenses in response to competition, and deprives CLECs of revenue because they are unable to backbill previously undercharged end users.⁵⁰

SBC’s billing problems in Michigan may already be on the verge of resolution. The Michigan PSC has required SBC to submit an improvement or compliance plan addressing “issues related to [CLEC] inability to audit bills received from SBC and to utilize its billing

⁴⁶ SBC Billing *Ex Parte* Attach. B at 2.

⁴⁷ SBC found 76,000 UNE-platform circuits that were provisioned, but were not being billed, for which SBC will send out bills in February 2003 totaling \$7.6 million. It also found 62,000 UNE-platform circuits that were inactive, but that were being billed, for which SBC will issue credits of \$9.3 million. The total number of incorrectly billed UNE-platform circuits is 138,000, in a state with fewer than one million total UNE-platform lines. *Id.*; SBC Heritage Aff. ¶ 8 tbl.1. SBC attributes the billing errors to mismatches between the records in its provisioning and billing databases. SBC Billing *Ex Parte* Attach. B at 2. It is unclear, therefore, whether the underlying cause of the billing errors is due to problems in SBC’s billing system or its order processing system.

⁴⁸ The relevant Michigan performance metrics have limited utility in measuring the correctness of bills incorrectly generated for the reasons revealed by SBC’s reconciliation. The most relevant metric, MI 14, is designed to determine whether bills are correctly being calculated according to SBC’s billing tables. *See* SBC Ehr Aff. Attach. A at 33. Such a metric cannot, of course, show whether the underlying information about the lines themselves, for which the rates are then calculated, is accurate.

⁴⁹ DOJ Pennsylvania Evaluation at 11.

⁵⁰ *FCC Pennsylvania Order* ¶ 23.

dispute resolution process once issues arise.”⁵¹ More easily audited bills will enhance the CLECs’ ability timely to discover and challenge inaccurate bills.⁵² In addition, SBC credibly asserts that its consolidation of billing platforms, and the subsequent reconciliation process, will help it generate more accurate bills in the future.⁵³ The Commission should assure itself that these measures will resolve SBC’s remaining billing problems.

C. Working Service Conflict Notification

WorldCom and AT&T point out in their Comments that when SBC sends “working service conflict” notices to CLECs, it does so by fax and not via any automated process. A “working service conflict” question arises when a CLEC requests a new line at a location where working service is already provided. SBC inquires in its notice whether the CLEC actually wants to provision a second line or to reuse the existing service. In the absence of a response SBC cancels the order.⁵⁴

SBC’s use of faxed messages, in combination with its policy to cancel orders for which no response is forthcoming, creates a potential for significant problems.⁵⁵ WorldCom and AT&T assert that the procedure often leads to delays and cancelled orders.⁵⁶ Information about how and why this procedure was instituted in the first place might shed light on its impact. As WorldCom

⁵¹ Michigan PSC Further Improvements Order at 9. In its proposed plan SBC commits itself to working with the CLECs, both in a collaborative forum and individually, to help resolve bill auditability concerns. SBC Compliance and Improvement Plan Proposals Attach. G at 4-5. Similar discussions could also be used to help resolve remaining billing problems.

⁵² Some CLECs assert in their Comments before the Commission that their bills are unauditible. The CLECs provide insufficient information, however, for the Department independently to evaluate these assertions or their potential impact on competition.

⁵³ SBC Billing *Ex Parte* Attach. B at 2.

⁵⁴ AT&T Comments at 13-14; WorldCom Comments at 7-8; WorldCom Lichtenberg Decl. ¶¶ 12-15.

⁵⁵ The Department has long emphasized the importance of using automated, electronic processes in inter-carrier ordering and provisioning communications, in part to reduce the possibility that simple errors will interfere with order processing. *See, e.g.*, DOJ Oklahoma I Evaluation at 28 & App. A at 68-71; DOJ New York Evaluation at 17-18, 29-30, 31-33.

⁵⁶ AT&T Comments at 13-14; WorldCom Comments at 8; WorldCom Lichtenberg Decl. ¶ 14.

concedes, moreover, SBC proposes to introduce automatic electronic notification, at least for orders processed in the new LSOG 6 system, when it introduces LSOG 6, anticipated in September 2003.⁵⁷ The Commission should review the CLECs' concern and take any responsive measures it considers appropriate.

D. Line-Splitting

AT&T raises several issues concerning SBC's provision of line-splitting service. Two of these issues merit the Commission's consideration.⁵⁸ AT&T has entered into a partnership with Covad that could provide significant competition to the combination of voice and DSL services now offered by and through the incumbent local telephone companies. On the same split line

⁵⁷ WorldCom Lichtenberg Decl. ¶ 15. WorldCom states that it would prefer e-mail as an interim solution. *Id.*

⁵⁸ AT&T points to a concern that arises when a customer with voice service from AT&T, and DSL service from Covad, decides to drop the DSL service. AT&T must, it has been told by SBC, submit three orders: one to disconnect the unbundled DSL loop; one to disconnect the unbundled switch port; and one to order a new loop and port combination. SBC's representative went on to say that a CLEC/DLEC customer who drops only the DSL service will lose voice service for up to seven days while the loop is removed from the DLEC's DSLAM, and further risks the possibility upon reconnection of being assigned a different telephone number. It is even possible, AT&T says it was told, that facilities shortages could prevent the customer from being reconnected altogether. In these circumstances, AT&T asserts, it has no alternative but to leave the loop in Covad's cage, burdening Covad and making the port unavailable for another customer. AT&T Comments at 53-54; AT&T DeYoung/Connolly Decl. ¶¶ 20-21.

SBC will, the Department presumes, supply a resolution for this problem in its Reply Comments. The Commission should examine those Reply Comments carefully. If in fact what AT&T was told is true, and a customer could not delete DSL service provided by a voice/DSL partnership without incurring a seven day service interruption and risking loss of the telephone number, competition in this important arena would be seriously threatened.

AT&T also points to line-splitting problems that stem from SBC's practices in versioning its EDI software. SBC properly supports several versions of its EDI software. AT&T asserts, however, that because of a peculiarity unique to SBC's order processing system, once an order is placed, all subsequent related orders must be placed using the same EDI version. AT&T alleges that this requirement imposes a burden on its and Covad's competitive provision of voice and DSL service. Once AT&T places an order for UNE-platform voice service, Covad cannot send its DSL order unless it uses, as it normally does not, the same EDI version as AT&T. AT&T Comments at 22-23; AT&T DeYoung/Willard Decl. ¶¶ 138-40. Again, SBC will presumably discuss in its Reply Comments any measures it is considering to resolve this problem. The solution may well also require the cooperation of the affected CLECs. The Michigan PSC's collaborative discussions should provide a forum in which the parties can work toward a mutually satisfactory result.

Somewhat related but different concerns about the peculiarity in SBC's versioning policy are raised by AT&T and also by McLeodUSA. AT&T Comments at 22-23; AT&T DeYoung/Willard Decl. ¶¶ 138-140; McLeodUSA Comments at 14-15.

AT&T provides voice service via UNE-platform, while Covad provides DSL service. AT&T has, however, encountered several obstacles to implementing the partnership's combination of services in SBC's Michigan service area.

The Michigan PSC found generally that SBC has satisfied its line-splitting obligations based on a previously submitted amended compliance plan. The PSC acknowledged, however, that "other possible scenarios for line sharing/line-splitting may occur that have not been envisioned or addressed in SBC's plan."⁵⁹ It directed CLECs to identify further line-splitting and line sharing issues by February 13, 2003, and expects these issues to be included in the collaborative discussions scheduled for March 4.⁶⁰ Presumably, AT&T will raise its issues in that forum, and SBC will submit a responsive compliance plan. The Commission should review that plan and SBC's Reply Comments in this proceeding and take any supplemental measures it deems necessary.

V. Reliability of Reported Performance Data

CLEC commenters challenge the reliability of SBC's Michigan performance measure data.⁶¹ Reliable performance measure data is important. It serves as the key input in determining whether a BOC is providing nondiscriminatory access to network services and facilities.⁶² CLEC complaints about data reliability in Michigan are based largely on the fact that the third-party audit of SBC's performance metric data being conducted by BearingPoint is yet incomplete, with many BearingPoint Observations and Exceptions remaining open and unresolved. CLECs protest SBC's submission of an alternate data integrity review by Ernst & Young, which the CLECs

⁵⁹ Michigan PSC Report at 88.

⁶⁰ Michigan PSC Further Improvements Order at 10-11.

⁶¹ AT&T Comments at 29-49; TDS Metrocom Comments at 10-19; WorldCom Comments at 13-19.

⁶² See DOJ Georgia/Louisiana I Evaluation at 31 ("The Department and the FCC place great weight on performance data in evaluating the actual commercial experience of BellSouth's competitors.").

argue is less rigorous, to substitute for the incomplete portions of BearingPoint's test.⁶³ The CLECs argue that the Michigan PSC should have waited for BearingPoint to complete its testing before proceeding to utilize the data in its review of the checklist items.

The FCC has not required a completed audit as a condition of undertaking Section 271 review.⁶⁴ Instead, the FCC's aim is to assure that the performance data can be relied upon, and an audit, completed or uncompleted, is one piece of evidence, albeit a highly regarded type of evidence, that is considered in making the determination of reliability.⁶⁵ The fact that the BearingPoint audit is ongoing does not itself necessitate a finding that the performance measure data is generally unreliable. In its current investigation, the Commission should satisfy itself that there are sufficient other indicia of reliability to support the Michigan performance data.⁶⁶

The availability of multiple methods does not of course diminish the importance of accurate and reliable data in the Section 271 process. Such data plays an important role both

⁶³ AT&T Comments at 37-47; TDS Metrocom Comments at 10-17; WorldCom Comments at 14-17.

⁶⁴ *FCC Georgia/Louisiana Order* ¶ 19 ("We recognize that BellSouth's data continues to be subjected to third-party audit, but we cannot as a general matter insist that all audits must be completed at the time a Section 271 application is filed at the Commission."), ¶ 19 n.68 ("Indeed, the Commission has not required a completed audit of the data in past Section 271 orders, but has said that it will give greater weight to evidence that has been audited, or has been made available to competing carriers, and for which a data reconciliation has been conducted when questions about the accuracy of the data have been raised.").

⁶⁵ *Id.* ¶ 19 n.68 ("If an audit is underway, an interim status report from the third party conducting the audit that states how much of the audit is complete, what problems or exceptions have been found, and the nature and size of those problems, also weigh heavily in our analysis."). Besides third-party audits, other indicia of reliability cited by the FCC include the BOC's internal and external data controls, open and collaborative metric workshops, the availability of the raw performance data, the BOC's willingness and ability to engage in data reconciliations, and the oversight of the state commission. *Id.* ¶ 19. The reconciliation indicium seems especially noteworthy here. Company-specific raw data is available, SBC states, to the CLECs in Michigan. Under the Michigan PSC's orders CLECs may request formal reconciliations and "mini-audits" of this data. Yet, according to SBC, no CLEC has requested that either procedure be undertaken. SBC Ehr Aff. ¶¶ 267-71.

⁶⁶ The Department is somewhat concerned that some metrics might fail to depict in a meaningful way the actual experience of SBC's competitors. In its Comments AT&T describes several situations in which SBC incorrectly rejects valid orders. AT&T DeYoung/Willard Decl. ¶¶ 17, 26, 28. AT&T contends further that due to delays and other problems with SBC's manual processes for correcting improper rejections, it feels compelled to push these orders through by submitting supplemental orders, which are not reflected in the performance metrics, and that as a result the reported metrics do not reflect SBC's actual performance. *Id.* ¶¶ 27-28. These practices, if done with sufficient frequency, could affect the validity of the relevant performance metrics. The Commission should take this phenomenon into account when it considers the affected metrics.

before and after Section 271 approval in ensuring that local markets are and remain open to competition, and that BOCs do not discriminate against local competitors. The Michigan PSC appropriately intends to “vigorously pursue completion of the remaining portions of the BearingPoint and E&Y testing in regard to SBC’s metrics reporting so that a stable and dependable system will be in place in the very near future.”⁶⁷ Further testing and refinement of the performance measures will permit effective monitoring of SBC’s wholesale performance even after Section 271 authority is granted. The Department recommends that the Commission satisfy itself that a stable and reliable performance measure system will be in place to assure that the Michigan market remains open after the application is approved. The BearingPoint audit should be complete, or nearly complete, by the time the remaining state commissions in the Ameritech region – those of Illinois, Indiana, Ohio, and Wisconsin – take up SBC’s Section 271 applications. Those state commissions undoubtedly will consider any problems revealed by completion of the audit.

VI. Conclusion

Under the guidance of the Michigan PSC, SBC has made significant strides in opening its Michigan markets. Nevertheless, the concerns discussed in this Evaluation particularly implicate the irreversibility prong of the Department’s “fully and irreversibly open” standard, and thus preclude the Department from supporting this application based on the current record. The Department does not, however, foreclose the possibility that the Commission may be able to determine that these concerns have been adequately addressed prior to the conclusion of its

⁶⁷ Michigan PSC Report at 22. In the same paragraph, the Michigan PSC expresses concern whether “SBC’s performance metric reporting process has fully achieved a level of stability and dependability which will be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior.” *Id.* There is a tension between the PSC’s conclusions about the utility of the Michigan performance data to evaluate the openness of Michigan’s market today and about the stability of the performance measure system to enable the monitoring necessary to assure nondiscriminatory behavior in the post-Section 271 future.

review. The Department urges the Commission to give careful attention to the issues raised in this Evaluation.

Respectfully submitted,

/s/ Nancy M. Goodman
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Chief

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February 26, 2003

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Certificate of Service

I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on February 26, 2003.

/s/ Layla Seirafi-Najar
Layla Seirafi-Najar
Paralegal
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April 14, 2003

Ex Parte Presentation

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region,
InterLATA Services in Michigan*, WC Docket No. 03-16


Dear Ms. Dortch:

On behalf of SBC Communications Inc. ("SBC"), I am attaching a letter that William M. Daley of SBC sent on Friday, April 11, 2003, to Chairman Powell and the Commissioners. See Attachment A. I am also attaching a copy of a document that James C. Smith of SBC faxed on Friday to Daniel Gonzalez of Commissioner Martin's office. See Attachment B.

Finally, I wish to inform you that, on April 11, 2003, James C. Smith, Rebecca L. Sparks, Jared Craighead, and Geoffrey M. Klineberg, on behalf of SBC, met with Christopher Libertelli of the Chairman's office, to discuss the data integrity and billing issues.

In accordance with this Commission's Public Notice, DA 03-156 (Jan. 16, 2003), SBC is filing this letter and attachments electronically through the Commission's Electronic Comment Filing System. Thank you for your kind assistance in this matter.

Sincerely,


Geoffrey M. Klineberg

Attachments

cc:	Christopher Libertelli	Gina Spade
	Mathew Brill	Susan Pié
	Jessica Rosenworcel	Layla Seirafi-Najar
	Daniel Gonzalez	Dorothy Wideman
	Lisa Zaina	Ann R. Schneidewind
	John P. Stanley	Qualex International

Attachment A



William M. Daley
President

SBC Communications, Inc.
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210-351-3700 Phone
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April 11, 2003

Hon. Michael K. Powell, Chairman
Hon. Kathleen Q. Abernathy, Commissioner
Hon. Michael J. Copps, Commissioner
Hon. Kevin J. Martin, Commissioner
Hon. Jonathan S. Adelstein, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: SBC's Michigan Section 271 Application, WC Docket No. 03-16

Dear Chairman Powell and Commissioners:

I am writing this letter to urge you to support SBC's application for long-distance authority in Michigan. The record in this proceeding demonstrates that SBC has done everything that Congress and this Commission have asked of it in implementing the local competition provisions of the 1996 Act and opening the local market in Michigan. The results are clearly evident: there is more local competition in Michigan than in almost any state for which section 271 has been granted – in fact, nearly one-third of the access lines in Michigan are now being served by CLECs. Michigan Bell has provided consistently excellent wholesale services and facilities to these local competitors. SBC has also successfully completed comprehensive OSS testing by BearingPoint/Hewlett Packard throughout its Midwest region, at a cost of more than \$250 million over the past two years. The Michigan PSC, one of the strongest and most respected public service commissions in the country, has meticulously reviewed and evaluated every step that SBC has taken over the past seven years (and, in particular, over the past three years) to open the Michigan local market to meaningful, substantial and ongoing competition. The Michigan PSC's support for this Application has been earned through tremendous effort; the degree of enthusiasm with which the Michigan Commissioners have endorsed this Application is unprecedented.

Yet, despite all of this, I understand that the fate of this Application has apparently come down to two issues: (1) that the BearingPoint replication test of the performance measurements is not yet complete, even though these same measurements have been thoroughly audited by Ernst & Young and found to be reliable by the Michigan PSC, and (2) that there is insufficient evidence to conclude that SBC produces accurate wholesale bills for UNE-P services after the records were converted to the Carrier Access Billing System ("CABS") in October 2001. This, in spite of the fact that BearingPoint subsequently tested the same billing systems in SBC's other Midwest states and confirmed that these systems are currently providing bills that are accurate, reliable,

and auditable. To deny this Application on these grounds would require you to apply a higher standard than you have ever applied before and to disregard completely the detailed findings and conclusions of the Michigan PSC on these same issues. Not only would that be unfair to SBC, but it would be extraordinarily unfair to the consumers of Michigan. They have waited years for the benefits of meaningful competition from SBC in the markets for long-distance and bundled services, and the consequences of denying this Application – particularly in light of the remarkable degree of competitive penetration in the market for local services – would be extremely serious.

With respect to the first issue, SBC filed this Application only after it had effectively completed Ernst & Young's third-party audit of its performance measurements – an audit that was entirely consistent with third-party verifications that this Commission has repeatedly accepted in the past. See, e.g., California Order ¶ 77; Arkansas/Missouri Order ¶ 17; Qwest Nine State Order ¶ 13. SBC has never suggested that the incomplete BearingPoint test alone would have been sufficient to satisfy this Commission's requirement for a third-party verification of the performance measurements. That is precisely why, at considerable expense, SBC, with the concurrence of the Michigan PSC, engaged the services of Ernst & Young to perform its audit. Both SBC and the Michigan PSC relied on this Commission's prior orders when they determined that a successfully completed Ernst & Young audit would be sufficient to satisfy any concerns about the reliability of SBC's performance data. Indeed, the staff of the Wireline Competition Bureau assured us prior to our filing this Application that an Ernst & Young audit would suffice, so long as nothing in BearingPoint's continued review undermined the reliability of Ernst & Young's conclusions. Of course, BearingPoint is in the midst of its exacting work to replicate and test every performance measurement, but SBC has demonstrated in this record that BearingPoint has not found any material problems (using the materiality standard endorsed by this Commission and employed by Ernst and Young) with any performance measurement that would call into question the trustworthiness of the Ernst & Young audit. If the question is whether BearingPoint's incomplete replication has undermined in any way the legitimacy of Ernst & Young's audit, the answer is "no." And the Michigan PSC has already concluded that "[t]he benefits to Michigan consumers of true competition in local, long distance and bundled services far outweigh any benefit of several more months of waiting for incremental test results." Michigan PSC Reply Comments at 6. If this Commission were now to deny this Application on the grounds that SBC has presented "only" an Ernst & Young audit and not a completed BearingPoint replication test, that would constitute an astonishing and unwarranted departure from this Commission's precedent.

As to the billing issue, SBC has demonstrated that BearingPoint's testing of the identical wholesale billing processes in Illinois, Indiana, and Wisconsin (which was completed in August and September 2002) confirms that SBC provides accurate, timely, and auditable bills. BearingPoint itself has concluded that the results it found in these three Midwest states apply equally to Ohio's systems, and the Michigan PSC has confirmed that the same conclusions apply in Michigan as well. See Michigan PSC's Comments at 5-6 (Mar. 24, 2003) ("BearingPoint's tests and the results of SBC's billing performance measures support a conclusion that SBC's billing systems and, in particular, the newly implemented portions of the CABS UNE-P billing system provide competitors a reasonable opportunity to compete."). This Commission, most notably in its

Georgia/Louisiana Order, has relied on successful testing in neighboring states to confirm the functioning of identical systems in the applicant state. See Georgia/Louisiana Order ¶ 161 n.590 & ¶ 255 n.985. The Commission should follow this precedent here and take account of the results of a third-party test of identical systems in other states, especially considering BearingPoint's own conclusion that such reliance is entirely justified. Again, to depart from this precedent would be holding SBC to a different and higher standard than this Commission has historically applied.

BearingPoint's successful testing of SBC Midwest's billing systems in the mid-2002 timeframe is strong evidence that the actions taken by SBC in January and February of 2003 to correct certain discrepancies in its carrier billing data base relate to the small percentage of UNE-P circuits impacted by the CABS conversion. This, in turn, substantiates what SBC has said all along – that the discrepancies in the CABS database were caused by problems encountered with the one-time conversion in the Fall of 2001 of all UNE-P billing records into CABS. At the Staff's request, SBC filed an ex parte letter, detailing how the problems SBC encountered during this one-time conversion to CABS resulted in the database discrepancies that were recently addressed. While the January 2003 reconciliation synchronized the provisioning and billing databases, the reconciliation does not call into question the reliability or accuracy of the underlying billing system that was tested by BearingPoint. The Commission invited parties to comment on SBC's billing ex parte. Not surprisingly, several CLECs responded, but only with unsubstantiated and vague claims that problems remain. Time and again, this Commission has refused to rely on such anecdotal allegations as a basis for rejecting section 271 applications, particularly in the face of strong evidence – such as that provided by BearingPoint's testing of the CABS billing system and the Michigan PSC's conclusions – that the Bell company's systems are currently functioning as required.

This Commission has consistently stated (and has recently reiterated in the Triennial Review proceeding) its intention to defer to the judgment of the expert state commission that lives with these issues every day and that focuses principally on the interests of consumers of telecommunications services in its state. Like the records of many section 271 applications, this one from Michigan is both enormous and confusing. Particularly with a statutory deadline of 90 days, this Commission's deference to the state commission is both appropriate and necessary. Any fair reading of the record before the Michigan PSC would confirm that the state commission has been relentless in its determination to ensure that SBC satisfied every requirement for section 271 relief. In light of this record and of the Michigan PSC's unwavering support in this proceeding, denying this Application would constitute a remarkable repudiation not only of the Michigan PSC's judgment, but also of its painstaking effort to apply faithfully this Commission's prior decisions.

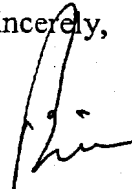
Every section 271 application presents difficult questions and choices, and this Application is certainly no exception. But when it comes to a final vote, the critical issue is whether the Bell company has taken the necessary steps to open its local markets to competition and whether carriers have a meaningful opportunity to compete. I simply ask you to follow your long-standing policy of evaluating section 271 applications by looking at the totality of the facts and circumstances presented. If you do, you will see that Michigan has among the lowest UNE rates in the country; that CLECs have taken a

higher percentage of SBC's access lines than anywhere in its region; that SBC's actual performance in providing wholesale services has been outstanding; that SBC has in place a performance remedy plan that will ensure that it has appropriate financial incentives to guard against backsliding; and that, in any case, the Michigan PSC and the State Attorney General will remain vigilant in ensuring that SBC continues to comply with its obligations in the post-271 environment.

The record before you is obviously not perfect; it could never be. But it is very strong. If you apply the same standard that you have consistently applied in every other section 271 proceeding, you should grant this Application. But you would be changing the rules on us to deny the Application on the grounds that BearingPoint continues to test the performance measurements that Ernst & Young has already found to be accurate, stable, and reliable or that SBC lacks a third-party test confirming the accuracy of its wholesale billing systems that have already been tested and found reliable in Illinois, Indiana, and Wisconsin.

I urge you to grant this Application and extend to the consumers of Michigan the benefits of the competition that section 271 makes possible.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Daley", written over the word "Sincerely,".

William M. Daley

Attachment B

"Conservative" Estimate (E911 + VME-P + Resale)

<i>As of 7/02</i>	<u>SBC</u>	<u>CLEC</u>	<u>Total Market</u>	<u>% CLEC</u>
California				
Residential	10,581,000	786,000	11,367,000	6.9%
Business	6,929,000	1,816,000	8,745,000	20.8%
Total	17,510,000	2,602,000	20,112,000	12.9%

*J. Gary Smith
Affidavit*

<i>As of 11/02</i>				
Michigan				
Residential	2,465,000	891,000	3,356,000	26.5%
Business	1,885,000	633,000	2,518,000	25.1%
Total	4,350,000	1,524,000	5,874,000	25.9%

Heritage Affidavit